BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-EI
FLORIDA POWER & LIGHT COMPANY

IN RE: FLORIDA POWER & LIGHT COMPANY'S PETITION FOR ISSUANCE OF A STORM RECOVERY FINANCING ORDER

APRIL 10, 2006

REBUTTAL TESTIMONY & EXHIBITS OF:

MORAY P. DEWHURST

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY

REBUTTAL TESTIMONY OF MORAY P. DEWHURST

DOCKET NO. 060038-EI

APRIL 10, 2006

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Moray P. Dewhurst. My business address is Florida Power & Light Company, Finance Division, 700 Universe Boulevard, Juno Beach, Florida 33408-0420.

Q. Did you previously submit direct testimony in this proceeding?

A. Yes.

Q. Are you sponsoring an exhibit in this case?

A. Yes. I am sponsoring an exhibit consisting of seven documents, MPD-4 through MPD- 10, which is attached to my rebuttal testimony.

Q. What is the purpose of your rebuttal testimony?

A. My testimony responds to proposals and assertions raised by Florida Public Service Commission Staff (Staff) witness Jenkins, AARP/ Office of Public Counsel (OPC) witness Stewart, OPC witness Larkin, and Staff witnesses Fichera, Klein and Noel. For ease of reference, I provide below a list of the main topics addressed in my rebuttal testimony and their corresponding location in my testimony.

Q. Please summarize your response to Staff witness Jenkins.

A. Mr. Jenkins proposes that the Commission disregard the 2005 rate agreement and require that FPL not be permitted to recover up to 20% of its prudently incurred storm restoration costs. If adopted, this proposal would contravene longstanding and well-founded regulatory policy; be grossly unfair to FPL; raise investors' perceptions of regulatory risk and hence FPL's cost of capital; interfere with incentives for the safe and rapid restoration of power after hurricanes; and, finally, have a chilling effect on the possibility of any future negotiated settlement between utilities and other interested parties, which would be bad public policy.

Q. Please summarize your response to witnesses Stewart and Larkin.

A. Mr. Stewart proposes that the Commission approve a storm reserve in these proceedings of $150 to $200 million, compared with FPL's proposal of $650 million. I believe this would be shortsighted and would ultimately lead to greater rate volatility and higher costs for customers.

Second, Mr. Larkin cites a recent Gulf Power filing and metaphorically puts words into Gulf Power's mouth by claiming that Gulf Power supports his preferred method of storm accounting. This is inappropriate and ignores the fact that Gulf Power's situation and circumstances are quite different from FPL's, and that their method is an outcome of a negotiated settlement as I will explain.

Q. **What are the issues raised by Mr. Fichera's, Ms. Klein's and Mr. Noel's testimony that you believe the Commission should consider?**

A. These three Staff witnesses broadly address the bond issuance process under the securitization alternative and Mr. Fichera specifically asserts deficiencies in FPL's proposed process. In addition to responding to specific assertions of deficiencies, I will respond to a number of key issues raised by these witnesses.

First, the Commission should not adopt Mr. Fichera's proposal for "co-leadership" of the bond issuance process. Instead, the Commission should make clear whether FPL will have final decision making authority, as it would with any other bond issuance for which it is responsible, and which I recommend, <u>or</u> alternatively, whether the Commission wishes to exercise final decision making authority either directly or through an appointed representative, which I do not recommend.

Second, the Commission should reject Mr. Fichera's and Ms. Klein's proposal to adopt a so-called "lowest cost" standard for the securitization process. Such a standard is inherently unverifiable, ignores other important interests, is not required by the securitization statute, and was indeed explicitly considered and rejected during the legislative process. Instead, a more appropriate definition of cost shoul d be used, which I describe in detail later in my testimony.

Third, contrary to Mr. Fichera's testimony, FPL welcomes the involvement and input of the Commission, its staff, and its financial advisor in this process. However, our proposed process seeks to have all input relevant to a given decision provided before that decision is made, whereas Mr. Fichera's preferred process leaves open the possibility of "second guessing" after a decision is made, which I believe opens the door to possible misunderstanding and abuse.

Fourth, Mr. Fichera and Mr. Noel make the assertion that FPL's interests are not adequately aligned with customers' and only Mr. Fichera's proposed process, with Saber Partners effectively having veto power over every minute detail, can adequately protect customers. FPL's interests are in fact well aligned with customers' long-term interests.

II. ARBITRARY 20% COST DISALLOWANCE PROPOSAL

Q. Please summarize Mr. Jenkins' proposal.

A. Mr. Jenkins proposes that the Commission should arbitrarily order that FPL not be permitted to recover up to 20% of its 2005 prudently incurred storm restoration costs. Mr. Jenkins admits that such an action would be a departure from the historical regulatory framework followed by the Commission which has allowed the recovery of prudently incurred costs to provide electric service. This departure, he asserts, is justified in part because customers have been significantly impacted by rising fuel prices unrelated to storm-recovery costs. Mr. Jenkins also suggests that the cost sharing will provide further incentive to FPL to harden its transmission and distribution system. Finally, Mr. Jenkins concludes by reminding the Commission that they have no obligation to honor the Stipulation and Settlement Agreement that was negotiated and agreed to among all parties and approved by the Commission on August 24, 2005. The parties were the Office of the Attorney General, the Office of Public Counsel, the Florida Industrial Power Users Group, AARP, Florida Retail Federation, the Commercial Group, the Federal Executive Agencies, South Florida Hospital and Healthcare Association, and Common Cause.

Q. Do you agree with Mr. Jenkins that the Commission should impose a "sharing" of prudently incurred 2005 storm restoration costs?

A. No. I believe this would be poor regulatory policy, grossly unfair to FPL and highly detrimental to long run customer interests. I have five principal concerns with Mr. Jenkins proposal.

First, it denies FPL the opportunity ever to recover a portion of its previously incurred costs without regard to reasonableness and prudence and in so doing violates one of the most basic principles of sound ratemaking. As such, it is grossly unfair and poor regulatory and public policy.

Second, it is completely inconsistent with past practice in Florida, and in particular it is completely inconsistent with the outcome of the 2004 storm cost recovery proceedings, which included extensive presentation of fact and analysis by all interested parties, culminating in evidentiary hearings and a definitive ruling by the Commission regarding prudency.

Third, the proposal would be highly detrimental to our customers' long run interests because it would have an extremely negative impact on investor perceptions of risk associated with the State of Florida. The proposal would fundamentally change –clearly for the worse – the terms upon which investor owned utilities could be expected to raise capital, ultimately increasing costs for customers.

Fourth, it would create incentives for utilities that are counter to the goal of safe and rapid restoration of service following a storm and that would clearly be detrimental to customers' interests.

Fifth, it is completely inconsistent with last year's rate Settlement and Stipulation (as Mr. Jenkins himself acknowledges), on which the Commission had every opportunity to comment (and on which it did in fact comment prior to approval) in the full knowledge that future tropical storms could have a significant impact on FPL's service territory. Ignoring an agreement, signed and publicly endorsed by numerous parties and approved unanimously by the Commission, is poor public policy, would send negative signals to the financial community and have a chilling effect on any future negotiated settlements.

Q. How does Mr. Jenkins' proposal violate the principles of sound ratemaking?

A. It is axiomatic under Florida law and well established principles of utility regulation that regulated utilities are entitled to the opportunity to earn a "reasonable" rate of return on their investment. The practical manifestation of this principle in ratemaking is that *expected* levels of revenue are set such that they exceed *expected* levels of cost by an amount necessary to yield a reasonable rate of return on the appropriate investment base. In the case of storm restoration costs, rates are not set and have never been set on the basis of the full value of expected future storm restoration costs. Instead, the Commission has explicitly recognized that, in the event costs are incurred, they would have to be recovered through alternative means. In the 2005 Rate Stipulation and Settlement (attached as Document No. MPD-4), this was reinforced, and the parties agreed that during the term of the settlement *zero* value of expected restoration costs would be reflected in base rates and that 100% of prudently incurred costs would be recovered through alternative means in the event they were incurred (paragraph 10, 2005 Rate Case Stipulation and Settlement.)

Mr. Jenkins' proposal would leave one side of this equation intact: he would not change FPL's revenues that, if realized through sales of electricity, provide us the opportunity to earn the revenue that might be used to pay for a portion of restoration costs; but he would arbitrarily assign 20% of the costs to

FPL's shareholders. In so doing he would clearly violate the principle that prudently incurred costs are recoverable, even putting aside the propriety of overturning the 2005 Rate Stipulation and Settlement.

Q. **Does Mr. Jenkins recognize this violation?**

A. Yes. He states that "ordering some of the costs to be shared . . . is a departure from the concept that 100 percent of prudently incurred costs are always to be borne by a utility's customers."

Q. **What justification does Mr. Jenkins provide for this violation?**

A. Mr. Jenkins proposes three justifications. First, he simply believes that a utility's earnings "should" be affected by hurricanes, offering no justification; second, he notes that FPL's customers have seen their bills increase since 2000; and, third, he asserts that "cost sharing will incent FPL to harden its transmission and distribution system."

Q. **Should any of these considerations override the basic principle of ratemaking that you discussed?**

A. No. In the first case, as discussed by Mr. Davis, FPL revenues and costs are already negatively affected by hurricanes and other weather events, and Mr. Jenkins is disingenuous in implying that his proposal is consistent with this fact. Mr. Jenkins is not proposing that FPL bear the risk of variations around an *expected* level of future costs; rather, he would deny FPL the chance to recover its *expected* level of future costs, which is a completely different matter. Unlike operating cost variations, which can be positive or negative, storm restoration cost variances are always negative.

Second, while it is true that market driven increases in fuel costs have caused FPL's overall bills to go up, the mere fact that rates have increased is not a legitimate justification for such a radical departure from the basic principle that prudently incurred costs are recoverable. In fact, the two issues are not logically connected. FPL's prices are not and should not be set on the basis of what customers would *prefer* to pay – if they were, we would all ask for them to be set at zero. Customers receive from FPL a service that they value – just how highly they value it is obvious in the wake of a tropical storm – in exchange for a payment that is "just, reasonable and compensatory." Whether the cost of an independently determined and billed component of the Company's service is rising or falling should not affect this fundamental relationship.

Finally, Mr. Jenkins' argument with respect to hardening lacks a logical underpinning, and his proposal, if carried forward, could actually have perverse effects. As stated, it applies only to the current proceedings, and an arbitrary, ex post decision to shift costs from customers to FPL would have no impact on FPL's decision-making going forward – instead, it would merely be punitive. If applied as a policy going forward, it could well have the perverse effect of causing FPL to *over-invest* in system hardening. Mr. Jenkins seems to ignore that a system that has complete immunity to tropical storm activity (hence zero expected restoration costs), even if it were technically attainable, would come at a substantial cost, which ultimately is borne by customers. As a matter of policy, the Commission should want FPL to make future hardening decisions on a rational basis of expected total system cost and reliability or as a matter of Commission-directed public policy. Mr. Jenkins' proposal, if applied as a future policy, would contravene this.

Q. Have the issues addressed by Mr. Jenkins' testimony been raised in any earlier proceedings?

A. Yes. The Commission conducted evidentiary hearings in 2005 to determine the appropriate treatment of FPL's 2004 storm restoration costs. Indeed, the principle of so-called "sharing" was raised then and rejected in the final order. The Commission was very clear in its final order, and the fundamental principle of recoverability of prudently incurred costs continued to be applied. FPL reasonably relied on the outcome of that docket, as well as prior instances where the same principle was clearly recognized, in planning its operations. Thus, any change at this point would in my view be retrospective and punitive in nature and thus grossly unfair to FPL.

Q. Mr. Jenkins claims his proposal is consistent with past regulatory policy and compares his proposal to sharing mechanisms for gains on utility off-system wholesale sales and the Generating Performance Incentive Factor. Do you agree with his comparison?

A. Not at all. Both the sharing of off-system sales and the Generating Performance Incentive Factor are designed to provide an appropriate incentive for the Company to choose to take positive steps that provide benefits to customers. Mr. Jenkins' proposal is merely a shifting of a normal cost of providing electric service to shareholders.

Q. In what way would Mr. Jenkins' cost-shifting proposal affect investors' perceptions of risks associated with committing capital to FPL?

A. The impact would be twofold. First, investors would simply require a higher rate of return to compensate for the cost shifting that Mr. Jenkins proposes. Because investors compare the <u>net</u> return they can expect to receive from a particular investment with those competitively available elsewhere in the capital markets they would obviously require a greater "gross return" (i.e., expected return prior to the shift of 20% of expected future storm costs) in order to achieve a competitive net return. Thus, after an initial shift of cost from customer to shareholder, over time the customers would end up bearing roughly the same cost – but they would do so through higher costs of capital. Over the long haul, it is not possible to consistently impose costs on investors, since capital is readily transferable and investors have many other competing alternatives for capital allocation.

Second, and more important, Mr. Jenkins' proposal would actually make the situation worse for customers than this analysis suggests, because there would likely be a significant increase in risk associated with investor's assessment of the stability of the regulatory climate. If the basic principles of regulation are changed and negotiated settlements disregarded to the utilities' disadvantage after the fact, investors will sense a significant increase in risk in the regulatory environment in Florida. Investors are generally able to evaluate the risks of pre-defined frameworks quite well. They are quite unable to evaluate the risks of arbitrary, ex post changes in framework, and where they suspect the probability of such changes may be significant they discount 'promised' outcomes severely. This effect would serve to increase the net cost of capital, in addition to the "gross up" effect noted earlier. Thus, the long-term effect would be to increase cost not only for FPL's customers, but for all customers within the state.

Q. Does Mr. Jenkins' proposal support the goal of safe and rapid restoration of service following a storm?

A. No. In prior testimony I have noted that customers' interests differ in post-storm periods from those that govern normal times. In the immediate aftermath of a storm with extensive outages, customers' interests are best served by focusing on the safe and rapid restoration of power. Thus, while cost is always important, the goal of storm restoration is *not* cost efficiency. In practice, a trade-off often exists between rapid restoration and restoration cost. For example, in general, the greater the number of outside crews brought in to assist with restoration efforts, the faster service can be restored to our customers, but the higher the unit cost. Many other practical techniques are used to speed up restoration activities that also involve incremental cost compared to normal operations. Under Mr. Jenkins' proposal, a utility's financial incentives would suggest interests that diverge significantly from those of customers. While it will never be possible to completely harmonize customer and utility interests, I believe it is poor public policy to deliberately introduce a significant financial incentive to act contrary to customers' best interests, particularly at such a critical time.

Q. **Do other protections exist to ensure that utilities pay attention to cost during restoration?**

A. Yes. However, the Commission already has a powerful tool to ensure that utilities are speedy but not wasteful, and that is prudence reviews. Both the current proceedings as well as those last year demonstrate that there is ample opportunity for intervenors and Staff to investigate and challenge every dollar that FPL commits to storm restoration. They are free to challenge costs that FPL believes assist the goal of safe and rapid restoration, and the Commission can make final determinations. To these existing protections, Mr. Jenkins' proposal adds nothing helpful, but instead merely punishes a utility for acting prudently and in good faith to meet its customers' needs.

Q. **How is Mr. Jenkins' proposal inconsistent with the 2005 Rate Stipulation and Settlement Agreement?**

A. The 2005 Settlement explicitly acknowledges that prudently incurred storm restoration costs are recoverable and provides two alternatives for recovery: a surcharge or the use of securitization.

Q. **Mr. Jenkins states that the Commission is not bound to observe the terms of the Settlement. Do you agree?**

A. Yes. My concern is not whether the Commission has the authority to override the Settlement but whether it is wise to do so. I believe it would be extremely unwise in this instance.

Q. What has been the Commission's policy regarding the importance of honoring negotiated settlements?

A. Generally speaking, it has been to give a great deal of deference to agreements voluntarily entered into by parties in full knowledge of the facts and after reasoned argument and negotiation. Those conditions clearly apply here. It would be a drastic departure from Commission precedent to issue an order that had the effect of undermining a negotiated settlement. In fact, as Commissioner Deason pointed out at the August 24, 2005 Special Agenda Conference at which the Stipulation and Settlement was approved (Docket No. 050045-EI, Hearing Volume 10, Tr. 1649-1650):

> … I think that this Commission has an overriding and ongoing obligation to make sure that rates are fair, just, and reasonable, and I don't think that we are going to abdicate that. But having said that, at the same time I think this Commission has a long history of giving great weight to settlements, to the sanctity of the settlements, trying to make sure that everybody abides by the settlement and that we administer those in the spirit in which they were agreed to by the parties. And I don't see any deviation

from that if this one is approved like the others have been approved.

I think the Commission has had a long history of encouraging settlements, and through the very hard work of some very dedicated officials and management that sees the advantages of removing risk and uncertainty have entered into these agreements, which I think have well served the people of Florida. And I don't think there is going to be – I mean, you can't know what a future Commission is going to be, but I just know that the tradition and the history of this Commission is to give great weight to those settlements and enforce them with the spirit in which they were agreed to.

Q. In the negotiations leading up to the 2005 Rate Settlement, were considerations of storm cost treatment addressed?

A. Yes. This is clearly reflected in the plain language of the agreement, and it represented a significant component of the discussions leading up to the final agreement. In the rate case, FPL had formally requested an increase in the annual storm accrual from $20.3 million to $120.3 million, which if granted would have been reflected in higher base rates. As an integral part of an overall settlement, FPL agreed to withdraw its request for an increase and even to eliminate the previously existing accrual, since those actions would enable base rates to be held down. In exchange, FPL required, and intervenors agreed to, the language contained in the agreement. All we are now asking is for the Commission to uphold the plain language of the agreement.

Q. If the Commission were to adopt Mr. Jenkins' proposal, do you think it would have an impact on future negotiated settlements?

A. Yes, I think it would have an extremely chilling effect. Since this issue is so significant and goes to the heart of the trade-offs that were made in reaching agreement, it would clearly have an impact that reaches far beyond the current agreement. Mr. Jenkins obviously realizes that this is not a matter of interpreting an unclear part of an agreement one way or the other; it is a complete gutting of a key provision. I cannot help but believe every utility would be concerned that any future agreement it might reach would potentially be subject to future unwinding or repudiation using later information and arbitrary criteria. This would clearly reduce the potential value of entering into any agreement.

III. STORM DAMAGE RESERVE

Q. Please summarize Mr. Stewart's recommendation for the appropriate level of the Reserve.

A. Mr. Stewart believes "it is prudent for the Commission to approve a Reserve that meets the historically-stated threshold of covering the costs of most, if not all, storms," so he calculates FPL's average annual storm damage for the years 1990-2005 as $147.120 million. He then examines if a $150 million Reserve would be consistent with past Commission policy. He concludes that since a $150 million Reserve would cover the expense level of thirteen of the last sixteen years, it is "consistent with the Commission doctrine of most, but not all storm seasons." Based on his analysis, Mr. Stewart thinks an appropriate Reserve level is $150 million; however, due to the projected increase in hurricane activity over the next decade or so, he believes the "Commission could reasonably include a 'safety margin' raising the approved reserve to $200 million." Mr. Stewart recommends that any Storm Damage Reserve Deficiencies resulting from excessive losses could be handled by a separate surcharge or an additional securitization.

Q. Do you agree with Mr. Stewart's recommendation?

A. No. I believe his application of the historical regulatory policy in this area is flawed. I will defer to Mr. Harris to rebut the specifics of Mr. Stewart's analytical approach and will address the policy implications.

Q. Is Mr. Stewart's conclusion that an adequate and appropriate Storm Damage Reserve should be $150 to $200 million consistent with past Commission conclusions?

A. I don't believe so. I believe Mr. Stewart misunderstands the sense in which the phrase "adequate to cover most but not the most extreme years" has been interpreted. In Order No. PSC-98-0953-FOF-EI, the Commission agreed that the reserve level should be large enough to absorb another 'Andrew type event,' and that "a reasonable level for the reserve is $370 million in 1997 dollars." The Commission recognized that even this level would not cover all realistically possible events but would afford a high degree of protection against any one bad year.

Simply escalating the cost of Hurricane Andrew from $370 million in 1997 dollars would be equivalent to a reserve level of approximately $460 million in 2006 dollars, when adjusted for actual historical inflation. Additionally, this historical target reserve level assumed an ongoing $20.3 million annual accrual to help maintain the target reserve level. My recommendation of a reserve level for now of approximately $650 million recognizes that under the current rate agreement there is no ongoing accrual, that FPL's system has grown in extent by 30-40% since 1997 and gives some recognition to the conclusion of many meteorological experts that we are in a phase of a multi-decade cycle with more frequent incidence of tropical storms.

Q. **What impact would Mr. Stewart's recommendation have on customer rates?**

A. Clearly, the level of the reserve has no impact on FPL's hurricane exposure. Accordingly, a lower reserve will simply shorten the expected time before it becomes necessary to return to the Commission and seek recovery of additional restoration costs. Other things equal, this will lead to greater rate volatility. In the extreme, with no reserve and an annual process with an annual surcharge, customers could see rates fluctuate from year to year by the equivalent of $0 to $8 or so per month on the typical 1,000 kWh bill. In addition, a smaller reserve will, other things equal, mean more frequent regulatory proceedings, each of which carries an administrative cost and burden for all parties.

Q. Assuming you agreed with Mr. Stewart that the reserve level should be set by analyzing storm losses over the past 16 years, how long would a $150 to $200 million reserve last assuming average annual storm losses over the past 16 years?

A. With an average annual loss of $147 million per year, as calculated by Mr. Stewart, the Storm Reserve would last approximately one year, on average.

Q. Does the passage of securitization legislation change the overall framework for recovery of storm restoration costs?

A. Not fundamentally. It clearly provides the Commission with an additional tool to use, which can be very helpful in certain situations. On the positive side, securitization provides the ability to replenish the Storm Reserve more rapidly than through an annual accrual or a surcharge. However, transaction costs associated with securitization bonds are higher than those associated with a surcharge. Thus, securitization is not as efficient as a surcharge coupled with an existing reserve to cover ongoing costs, and in the extreme it clearly would not be cost effective to issue bonds in small amounts on a continuing basis. Accordingly, I believe it is more appropriate to use securitization as a catch up and replenishment for catastrophic storm seasons. If we are to securitize, it makes a great deal of sense to take advantage of this opportunity to replenish the reserve to a reasonable level.

Q. Mr. Stewart states that the passage of securitization legislation provides statutorily guaranteed recovery of its storm expenses as long as they are

deemed prudent by the Commission. Does his position alter your view regarding the appropriate amount of the reserve?

A. No. Securitization merely gives the Commission an additional tool, to be employed at the Commission's discretion, to reduce the immediate rate impact of a storm reserve deficit by spreading the costs out relatively efficiently over time. The funding of securitization bonds is a lengthy process, and requires separate and specific Commission approval.

Furthermore, Mr. Stewart misunderstands the existing regulatory construct when he says that prior to the passage of the securitization legislation ". . . utilities might only recover storm damage expenses that caused them to earn less than a fair rate of return." (p.8) This issue was extensively discussed at last year's storm hearings and proper reading of the regulatory history shows that it is incorrect. Because Mr. Stewart misunderstands this point, the remainder of his analysis of the impact of the securitization legislation is flawed.

Q. Mr. Stewart claims that replenishment of the Reserve is inconsistent with the method FPL's customers have to use when recovering storm damage expenses to their own property. Do you agree with this statement?

A. In part, but this issue is irrelevant to the current discussion. The Storm Reserve, whatever its level, operates to the benefit of customers – all earnings on the fund accrue to the fund. The Storm Reserve operates to customers' benefit primarily by smoothing out the impact of storm costs on rates. That this process is not exactly the same as the way individual personal property insurance works is simply not relevant here.

Q. Is Mr. Stewart's statement that keeping the Storm Damage Reserve level as low as is reasonably possible will reduce interest and bond issuance costs accurate?

A. No, quite the reverse. Other things equal, FPL will need more frequent bond issuances to cover future weather events if the Storm Reserve is set at $150 - $200 million as suggested by Mr. Stewart and securitization is used to recover restoration costs. Because large debt issuances tend systematically to be cheaper (per dollar issued), more frequent, smaller issuances will result in higher, not lower costs to customers over the long run.

IV. STORM ACCOUNTING METHODOLOGY

Q. Did Gulf endorse the removal of expenses normally recovered through base rates as an appropriate accounting method in their storm recovery filing as Mr. Larkin contends?

A. Not at all. As stated on page 8-9 of the testimony of Mr. McMillan from the Gulf Power's case In Support of Recovery of Storm Recovery Financing in Docket No. 060154-EI, which is attached as Document No. MPD-5, "These exclusions were made voluntarily by the Company consistent with the treatment in the negotiated Stipulation and Settlement..." Mr. McMillan confirms again on page 9 of his testimony that "the Company has voluntarily made an adjustment to deduct $1.6 million from the **recoverable** [emphasis added] costs charged to the Reserve for Hurricanes Dennis and Katrina." Clearly the record does not show that Gulf Power believes this method of accounting is appropriate for any other purpose other than to be consistent with their existing settlement agreement.

Q. Does the fact that Gulf Power made certain concessions in their storm cost recovery filing to be consistent with their settlement agreement impact the appropriate accounting for FPL's prudently incurred storm costs?

A. No. It is unfair and improper to take concessions agreed to as part of an overall stipulation and settlement agreement for one company and arbitrarily conclude that those provisions should become policy and apply to all utilities. FPL and Gulf Power are under completely different circumstances and have been parties to vastly different agreements.

Gulf Power was a signatory on a Stipulation and Settlement Agreement with Office of Public Counsel and Florida Industrial Power Users Group in February 2005 regarding Gulf Power's 2004 storm costs and property insurance reserve deficit associated with Hurricane Ivan. Along with the storm issue, Gulf also had other matters, including overearnings of the company for 2004. In order to resolve these issues, and as a give and take that is part of all negotiated settlements, Gulf agreed not to seek cost recovery of certain amounts reflected in its $96.5 million property insurance reserve deficit. The below language from Order No. PSC-05-0250-PAA-EI in Docket No. 050093-EI describes the resolution of the Stipulation.

> We find that the Stipulation represents a reasonable resolution of the issues regarding the impact of Hurricane Ivan on Gulf's property insurance reserve. The Stipulation avoids the potential filing of a separate cost recovery petition, saving all parties the time and expense that would be incurred in processing a cost recovery petition. The Stipulation also resolves the apparent overearnings of Gulf for 2004. Further, the Stipulation resolves many of the issues that have been raised by our staff and other parties in storm cost recovery dockets involving other utilities. These issues include the exclusion of costs normally attributable to base rates, such as normal O&M expenses, normal cost of removal, and normal capitalized amounts. Finally, the Stipulation recognizes a sharing of restoration costs between Gulf's ratepayers and Gulf's stockholders, as Gulf has agreed to absorb $14 million of these costs in earnings.

V. FINANCING ORDER AND BOND ISSUANCE PROCESS

Q. Mr. Fichera and Ms. Klein both propose that the Commission adopt a "lowest cost" standard in evaluating the structuring and pricing of the storm recovery bonds. Do you agree?

A. No. While everyone will agree that low cost is a desirable objective, there are three principal reasons why "lowest cost" is not the right standard to seek to apply to FPL's securitization proceedings, notwithstanding its use in other instances. First, it is an absolute test (the term lowest by definition means that it is not possible to have a lower), but it is not verifiable – that is, given the practical circumstances of securities issuance, it will be impossible to know with absolute assurance that the <u>lowest</u> possible cost has been achieved. Second, it fails to recognize that lowest cost, while the most important single objective in the process, is not the only one. Third, it fails to recognize that mechanical application of a lowest cost standard could result in inappropriate and unfair transfer of economic risk to FPL.

Q. Please explain what you mean by "not verifiable."

A. Every financing transaction is a unique occurrence. Its relative success or failure is determined in part by the outcome of a series of decisions primarily made prior to launching the transaction in the marketplace and to a limited extent during the actual marketing and book building. It is literally impossible to know how a deal would have priced had any one of those decisions been made differently. Because each deal is unique and is brought to market at a unique moment, even very similar deals price differently. There is no way of knowing precisely whether, assuming two generally similar deals price differently, it is because of differences in execution, differences in the specific inherent characteristics of the deals, or differences in market conditions at the exact moment they were brought to market. Thus no one can honestly be sure that the particular approach they took to issuance and pricing actually produced the lowest cost, or whether a slightly different approach might have achieved even better results. It is certainly possible to make reasoned assessments, *ex ante*, as to whether a proposed issuance approach holds expectation of producing an efficient and low priced deal and whether the issuer has taken measures reasonably designed to achieve that objective. But it is not humanly possible to know whether it will produce *the lowest cost*. For this reason, I do not believe it is a good test to apply to FPL's proposed securitization offering.

In fact, Mr. Fichera's own testimony strongly suggests that the "lowest cost" standard, though it may have been certified to, has not in fact been met in past transactions. Mr. Fichera's Exhibit JSF-3 shows that even the best securitization transactions recently have priced at the high end of comparable credits. Mr. Fichera uses this observation to suggest that "with investor education and market expansion, the pricing of ratepayer-backed bonds can improve . . ." (p.35). If pricing can improve with additional investor education, it would be difficult to assert that any historical deal had attained the lowest cost standard, since presumably additional effort could have been devoted to additional investor education. This does not mean that I believe the historical issuances were not very efficient and low cost transactions, merely that an absolute lowest cost standard is neither realistic nor helpful.

Q. You state that cost is not the only consideration. What factors are important in judging the success of securitization issuance in this specific instance?

A. Without question, attaining low *total* cost (i.e., including both upfront and ongoing costs) is the single most important objective. However, there are two other factors of some significance that the Commission should consider. The first of these, and the more important, is timing. I agree with Mr. Fichera (p.46) that the length of time it takes to complete a transaction is not a "measure of success," but it is important that the process be conducted expeditiously and not allowed to drag on unnecessarily. With many transaction participants paid by the hour, one cannot ignore the cost of negotiation, procrastination and posturing. But of paramount importance is the impact of delay upon FPL's financial condition and operation. Given pressure on our liquidity situation and the prospect of another active storm season being soon upon us, an expeditious financing is crucial.

Sensible judgments have to be made here. Adding a day or two to the marketing period for the debt issuance if it brings in additional investors and creates pricing pressure to gain five or ten basis points is obviously an excellent trade-off. In contrast, dragging the process out for several weeks for a basis point or two would not be, in my judgment. Rigid application of a lowest cost standard clearly has the potential for bad results here. In this respect I concur with Commissioner Smitherman of the Texas Commission who stated: "All things being equal, price matters the most," followed by "Sooner is better than later." (Public Utility Commission of Texas Memorandum dated September 21, 2005 from Commissioner Barry T. Smitherman to Commissioner Julie Parsley and Chairman Paul Hudson, RE: September 21, 2005 Open Meeting Item No. 27, Discussion Regarding the Issuance of Transition Bonds by Centerpoint Authorized by Docket No. 30485, attached as Document No. MPD-6)

The concern about timing will be substantially mitigated if the Commission adopts FPL's proposal for an interim surcharge in the event that securitization is delayed.

The second factor to be considered is the impact of any one transaction on the terms of FPL's continued access to the capital markets. While the storm recovery bond issuance will be a slightly different transaction for FPL, it will still involve many of the same participants, particularly on the investor side, with whom FPL needs to maintain ongoing relationships. This is important as it sometimes occurs that in the pricing process it is possible to "jam" investors – that is, extract last minute concessions from them on terms and conditions or pricing. Investors have long memories. If they perceive that the final transaction pricing was not conducted fairly and above board it can lead to less willingness to participate in future transactions. In addition, investors judge the success of a transaction in part by how well the debt trades *after* execution. A transaction that is priced too aggressively tends to trade poorly, may leave large blocks in the hands of the underwriters, and can be perceived negatively, leading to *wider* spreads on subsequent deals, not only by FPL and its affiliates but potentially of the issuers of other storm-recovery bonds in Florida. FPL and its customers (and perhaps other Florida utilities and their customers) will bear the burden of this, while any transaction participant whose involvement is limited to the specific deal would have no interest at stake. For this reason, too, I believe the rigid application of a "lowest cost-at-all-costs" approach is poor.

Q. Please describe your third general concern with the use of the "lowest cost" standard.

A. Mr. Fichera notes in his testimony the fact that customers have an interest in a lowest cost transaction. But one fundamental area in which the interests of Mr. Fichera and FPL diverge is with respect to whether to aggressively push for a lower market price measured by as little as a single basis point, at the risk of incremental securities law liability and potentially very high costs to FPL through disclosures and representations that are not warranted. Fundamentally, such a result is no different than if, in order to lower costs to customers, the Commission were to require FPL to pay all of the issuance costs (or even more extremely, to subsidize 50% percent of the interest cost). Clearly the interest in low cost should not be pursued at "any and all costs." My concern here is that the mechanical application of a "lowest cost" standard has the potential to ignore such considerations and relevant interests. FPL is prepared to securitize its prudently incurred and presently unrecovered storm restoration costs, but would do so with the expectation that the resulting process will not be used as a backhand way to extract economic "concessions" from, or impose incremental legal liability on, the Company under the pretext of meeting a "lowest cost" (to the customer) standard.

Q. How would the application of a "lowest cost" standard affect the basic choice between securitization and surcharge?

A. Applied strictly, the "lowest cost" standard would lead one to conclude that the surcharge approach should be adopted, as it results in the customer having to pay fewer dollars than in the securitization approach. If Ms. Klein's standard ("Every dollar is a dollar, and in this case every dollar is a ratepayer dollar" p.6) were taken literally, then it would preclude adopting the securitization approach. For reasons stated in my direct testimony, I do not believe this is the right approach under the present circumstances. The Commission is fully entitled to look beyond an absolute "lowest cost" standard, and it should do so.

Q. Is a "lowest cost" standard required by the Florida Statute?

A. No, in contrast to certain other states, Florida's legislation is better, since it does not require the application of an unverifiable standard. Instead, it implicitly acknowledges the existing powers of the Commission to protect customers.

Q. Was a lowest cost standard considered by the Florida Legislature?

A. Yes. It is my understanding that the legislature expressly considered and rejected language almost identical to the Texas statute during the course of the legislative process. I have attached documents to my testimony (Document Nos. MPD 7 and 8 which, I believe evidences this. Although I am not an attorney, I believe that this legislative history may be important for the Commission to consider.

As can be seen on Document No. MPD-7 [Committee Substitute 1 for House Bill 303, p. 11 of 32, from the Florida Legislature website www.leg.state.fl.us] Section 2(b)2.c. of this version of the bill provided that the Florida Public Service Commission in a financing order was to "[e]nsure that the marketing, structuring, pricing, and financing costs of the storm recovery bonds will result in the lowest cost of the funds and the lowest storm recovery charges that are consistent with market conditions and the terms of the financing order." This language is very similar to the language in the Texas statute referenced by Ms. Klein in her testimony. In the next version of the legislation, however, shown in Document No. MPD-8 [Committee Substitute 2 for House Bill 303, p. 10 of 31] the section including this "lowest cost" standard is gone. The "lowest cost" standard is also not present in Senate Bill 1366 (a companion to House Bill 303), which ultimately passed the House and Senate and was signed by the Governor. Senate Bill 1366 is codified at Section 366.8260, Florida Statutes, the securitization statute.

Q. What standard instead of "lowest cost" was adopted by the Florida Legislature?

A. Instead, the legislature adopted a more reasonable standard. The Commission is to "[d]etermine that the proposed structuring, expected pricing, and financing costs of the storm-recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers ... ." Section 366.8260(2)(b)2.b.

Q. Ms. Klein asserts on page 9, lines 10-16, of her testimony that even though the statute authorizing securitization of storm-recovery costs does not have an expressly stated lowest-cost requirement, it can be applied. Do you believe the Commission should apply a lowest cost standard even if it is not required?

A. No. If the legislative history would indicate that the Florida Legislature expressly considered but rejected the standard advocated by the witnesses for Saber, I don't know why this Commission would accept its application through some other construct or interpretation of another subsection of the legislation. The statutory standard adopted in Florida is a forward-looking standard, whereas the lowest cost standard suggested by Ms. Klein is one that cannot practicably be determined in advance of the financing -- or ever. The two standards simply are not consistent one with the other.

Q. Is the Commission abrogating a general duty to act in the public interest if it does not apply a "lowest cost" standard?

A. No. The Commission is not required by statute to achieve, and would never know regardless of any certification required or provided, whether in fact the financing had achieved the lowest cost.

Q. What standards would you suggest the Commission consider in evaluating the success of FPL's financing?

A. I don't believe it is appropriate to use a single criterion to measure the success of the financing. I would propose a multi-part assessment designed to encompass the overall objectives I believe the Commission should consider in evaluating the success of the transaction. The best measure of success is clearly cost and the test should be: has the Company taken all reasonable steps that, based on the knowledge available at the time, and consistent with good financial market practice, would reasonably be expected to produce the lowest cost transaction. However, this test must be balanced by two other considerations. To be considered successful, a transaction must also (1) be executed efficiently without undue delay and its attendant inefficiencies, risks and increased costs, and (2) not unduly create incremental liability to the Company or prejudice to future transactions using "lowest cost" as a predicate). My proposal is thus "forward looking" and takes into account the additional appropriate policy objectives of the Commission – efficiency and balance. In sum, I propose a more rational and comprehensive definition of "lowest cost", and this is the standard by which the financing and Company should be judged, not by an arbitrary, unverifiable standard.

Q. Do you have a reaction to Mr. Fichera's, Ms. Klein's and Mr. Noel's observations about FPL's motivations in securitization issuances?

A. Mr. Fichera and Mr. Noel both argue that securitization deals are different from other financings, since customers directly rather than indirectly bear the burden of their economic impact, and that this difference in some way lessens FPL's interests in getting a good deal done. Mr. Noel explicitly states: "FPL's highest priority in this transaction likely will be to get the issuance done quickly, with cost taking a lower priority," and implies that ". . . . there are no adverse consequence to management and its shareholders for a mediocre result." (pp. 7-8). Mr. Fichera similarly states ". . . . FPL has no stake in the outcome other than to receive the cash and improve its balance sheet as quickly as possible." (p. 28) I strongly disagree and will explain why.

Q. What are FPL's interests in a securitization issuance and how do they compare with customers'?

A. I agree with Mssrs. Fichera and Noel to the extent that FPL shareholders will not directly bear the burden of issuance costs or the actual financing charges. However, it does not follow that FPL has no interest in a successful financing. In fact, FPL has a very strong interest in this process being successful, as measured by an efficient, low cost transaction that trades well and leaves all participants with a positive after-reaction. This is true for several reasons.

First, although the proposed storm recovery bonds are not particularly complex or difficult to comprehend for financial market participants, they do have some special characteristics, and this will be the first time that this particular type of bond has been issued. FPL is both the sponsor of the transaction and the parent of the issuer, or SPE. Our reputation in the markets will be directly affected by how well this transaction succeeds, and this will affect future transactions, which collectively will be much larger than the storm recovery bonds.

Second, although this is the Company's first securitization, it is well within our competency. In contrast to Mr. Noel's contention, we have assigned senior level treasury management and have retained experts who are among the most experienced in this area to assist us in this process. We always strive for efficiency and low cost in our execution (and generally achieve it, as witnessed by the spreads at issuance on our first mortgage bonds).

Third, we are well aware that our performance in issuing the storm recovery bonds will be closely scrutinized by the Commission and intervenors in this case. While we cannot control the final outcome, we clearly have a strong reputational interest in seeing that we enter the final pricing phase well positioned for a low cost outcome.

Fourth, it is entirely possible that we may need to come to the Commission in the future with a subsequent request to authorize the issuance of additional storm-recovery bonds. Therefore, we have a keen interest in ensuring this deal is considered successful for both customers and the Company.

Finally, FPL has a keen interest in keeping overall rates as low as possible and mitigating rate impacts to our customers.

Thus, our interests with customers are in fact very well aligned. Customers want a low cost, efficiently executed deal, and so do we. Customers' interests are not served by an unnecessarily protracted execution process, and nor are ours. Customers' interests are not served if this one deal adversely affects future capital access, and nor are ours.

Q. Does FPL's proposed process allow the Commission to assure itself that the customer will receive the benefits of an efficient, low cost deal while properly balancing the secondary considerations that you mentioned earlier?

A. Yes. FPL's proposed process provides full scope for the Commission, directly or through its representative, to assure itself that each step of the structuring and marketing process is reasonably designed to produce the result we all want. Depending upon exactly what form the Commission desires its participation and oversight to take, the specifics of the process can be modified accordingly.

Q. Mr. Fichera states that he finds some of the FPL proposed procedures "troubling" and suggests that FPL's proposed process "seems designed to

limit the ability of the Commission's staff and financial advisor to participate actively and in advance in all aspects of structuring, marketing and pricing storm recovery bonds." (p. 54) Do you agree?

A. No. FPL's proposed process contemplates active involvement and extensive input from the Commission's representative and its advisors all through the development of the structuring, marketing and pricing process. The process is designed for efficient execution, however, so that all input will be received and evaluated *prior* to moving to the next step. While the process outlined in the financing order does not include all of the interaction contemplated by FPL for the structuring, marketing and pricing process, I have included on Document no. MPD- 9 a time line which lays out with greater specificity each of the transaction steps on which FPL would intend to confer with the Commission and its representatives. I believe it is crucial to have agreement on each decision (or notice of disagreement, if that were to occur) *prior* to implementation. In contrast, we see no such clarity in Saber's proposed process, nor do we observe that it is listed as a best practice.

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

Q. Are there substantive differences between FPL's approach and Saber's?

A. Yes. Although our proposed approach contemplates extensive and active involvement on the part of the Commission and its representatives, it does differ fundamentally from that proposed by Saber in one key respect. The critical issue relates to the definition of "active involvement" – a term that recurs throughout Mr. Fichera's testimony but remains undefined. I believe it will be helpful if we clarify this term and illuminate the main difference between FPL's proposed approach and Saber's by focusing specifically on the crucial issue of decision-making.

Q. How would decision-making occur under FPL's proposed approach?

A. We propose to consult with Staff and the Commission's financial advisor on all relevant matters prior to making decisions. As shown on the time line attached as Document No. MPD-9 we will do so at all critical junctures of the structuring, marketing and pricing process. But we expect to have ultimate decision-making authority for all aspects of the execution of the financing, just as we do with other financings for which FPL is the issuer or controls the issuer. We have an experienced capable staff and are fully able to execute a transaction of this nature. We expect to be able to execute a transaction that is very efficient and results in a tight (low) credit spread, taking advantage of many of the specific techniques successfully utilized by Saber in other transactions, as well as of our own extensive experience in executing financing transactions.

Under this approach, where Staff's or Saber's input differs from FPL's (and if it never differed then no purpose would be served by incurring the expense of hiring a financial advisor), the burden is on FPL to evaluate the differences and, where it chooses to depart from the input, to justify its choice. We will be ultimately accountable to the Commission if we exercise poor judgment. Under these circumstances it would be foolish, I believe, for FPL to overlook and fail to implement any proposal which holds out the prospect of a lower cost deal without adversely affecting any other interest. But the responsibility for moving forward should rest, appropriately, with FPL, the sponsor of the financing and the legal owner of the issuer.

Q. How would decision-making occur under Saber's proposed approach?

A. According to Mr. Fichera's recommendation, p. 58, Saber, acting on behalf of the Commission, would have "oversight for participation in real-time on all matters related to the structuring, marketing, and pricing of the storm recovery bonds." Elsewhere, (p. 29) Mr. Fichera refers to a "joint and collaborative effort" and a "co-leadership" role for the Commission with FPL. However, when specifically addressing the question of how decisions will be made if FPL and Staff and/or Saber disagree, which is obviously the critical question, Mr. Fichera proposes that "Saber, staff and FPL will make written presentations of their views to the FPSC." (p. 46) Logically, therefore, this means that final decision-making authority for all aspects of structuring, marketing and pricing would reside with the PSC. Elsewhere in his testimony Mr. Fichera confirms this: ". . . . the only way to protect ratepayers is to provide for Commission approval of all future decisions affecting ratepayers before they are made final." (p.52) If the Commission has to approve decisions it is in effect making them.

Q. Does the current contract between Saber and the Florida Public Service Commission provide for the extent of authority and scope of work advocated by the Saber representatives that have filed testimony in this docket?

A. No. Mr. Fichera indicated in his deposition that his contract and compensation would have to be revised to accommodate Saber's role if his recommendations in this case are accepted. (Saber Partner's contract with the Florida Public Service Committee is attached as Document No. MPD-10.)

Q. What impact would this proposed decision-making approach have in practice?

A. I believe it would be unworkable as a practical matter. In some cases, issues on which we might reasonably disagree would be too detailed to warrant the direct involvement of Commissioners, and during the actual pricing process it would very likely be impossible to obtain the Commission's decision in a timely fashion. As a practical matter, I believe the Commission needs to decide either to vest, within applicable limits, final decision-making with an appointed representative, or to leave it where it would normally reside for any financing execution, which is with FPL. Nevertheless, the ability to appeal to the Commission to obtain additional input in the event of differences will be useful.

Q. Do you believe "active" in the sense of decision-making in the hands of PSC acting through its representative is a better approach than FPL's proposal?

A. No. I believe it is neither necessary nor desirable. It is not necessary, because: (1) FPL has an experienced, capable staff and is well able to handle the mechanics of the proposed transaction; (2) FPL's proposed process will benefit from the input and practical experience of the Commission's financial advisor; and (3) the Commission already has all the tools and oversight it needs to assure that customers' interests are properly represented and protected. It is not desirable, because it places the Commission, directly or indirectly, in the role of accepting specific responsibility for execution – a precedent which, I submit, may not represent good public policy.

Mr. Fichera's proposed standard – that the only way to protect customers is to provide for Commission (i.e., Saber's) approval of all future decisions before they are made final – could just as well be applied to every other aspect of utility operations. I do not believe the Commission should want to put itself -- particularly by extension through an independent consultant -- in the position of making final decisions on operational matters, whether in day-to-day operations or in financing matters.

Q. **What implications would there be if, notwithstanding your recommendation, the Commission chooses to make itself, by acting through its financial advisor, responsible for the decision-making?**

A. Although I believe it is neither necessary nor desirable, FPL remains committed to executing a low cost, efficient transaction, and we will work productively and cooperatively whichever way the Commission chooses to go. Obviously, if FPL is not in a position to make the final decisions it cannot be held accountable for the final result, and it is conceivable that we might in good faith conclude that better results could have been achieved if different decisions had been taken. However, we will do all we can, consistent with observing the law and with maintaining our fiduciary obligations to our shareholders, to make the process a success even if that process is not precisely the one we would have chosen. But clarity in where final decision-making authority (and hence accountability) rests is crucial.

Q. **If the Commission chooses to reserve to itself, acting through its representative, final decision-making authority, are there limits to this authority?**

A. Yes. Under federal securities law, FPL as the parent of the issuer bears ultimate responsibility for the accuracy and completeness of the disclosures and representations made in bringing the debt to market. Accordingly, under all circumstances, FPL must have final authority to determine the exact wording of disclosure, and this should be made clear in any final order the Commission issues deciding how decision-making authority will be executed.

Q. Mr. Fichera in his testimony proposes a set of "best practices." Do you concur with these?

A. Not entirely. Mr. Fichera presents no evidence that his proposed practices do in fact lead to the best result and states only that they are based on his and Saber's experience. Reasonable people can disagree as to whether or not a particular practice is "best" in the context of the specifics of FPL's financing application.

Q. Do you concur with practice #1?

A. In part, yes, subject to my observations about decision-making authority noted earlier. I believe it will be useful to have the Commission's representative participate in the selection of the underwriters and underwriters' counsel, since this drives the largest single issuance cost. I see no value in having the Commission involve themselves, directly or indirectly, in selecting and negotiating with minor participants, such as printers, auditors or trustee. Moreover, the Commission should not select company counsel, or what Mr. Fichera has described as "deal" counsel.

Q. Do you concur with practice #2?

A. Yes, in part. In (2), Mr. Fichera recommends that the Commission carefully review and negotiate all transaction documents and contracts that could affect future customer costs to ensure accuracy and compliance with all laws, rules and regulations. I agree that it is important for the Commission to review all significant transaction documents. For this reason, FPL filed all of the significant transaction documents in substantially final form on January 13, 2006 with its petition. The only changes expected to be made to these documents would be those required to conform with rating agency requirements to obtain "AAA" ratings, to conform to any requirements of Regulation AB recently adopted by the Securities and Exchange Commission (which relate principally to servicer reporting requirements), or clerical or conforming corrections. FPL's proposed issuance process also provides that the Commission's representative and its advisor be provided revised transaction documents at least 30 days prior to launching the transaction and, if requested, all other documents and legal opinions at least 10 days prior to launching the transaction for comment and to determine if the final form of documents remain in compliance with the financing order. If the Commission staff has any comments to the forms of financing documents submitted with the Company's petition, we would welcome receiving them as soon as possible.

Q. Do you agree with practice #3?

A. I am unable to determine what Mr. Fichera means by "Ensure all statutory limits which benefit ratepayers are strictly enforced." To the extent this simply means that the Commission should comply with the Florida statute governing securitization, I agree it is a best practice.

Q. Do you agree with practice #4?

A. In part. I agree in principle that if actual servicer costs are higher or lower than the formal agreement between the SPE and FPL provides that customers should pay or receive the difference. However, as a practical matter, I believe it will be more costly to identify and account for these costs separately than any likely savings to the customer might be worth. That is why FPL used estimates representing the lower end of a range of such fees that have been approved in other utility asset-backed securitizations.

Q. Do you agree with practice #5?

A. No. For obvious reasons I do not believe it is appropriate to require that the ". . . . bonds be offered to the broadest possible market . . ." Taken literally, this implies that FPL should market the bonds all over the world. It is my view that the potential market among, for example, Bangladeshi investors (to pick just one market) is not sufficiently large and would not place any realistic price pressure on the issuance to warrant the effort involved. As in other areas of Saber's proposed process, the use of an absolute standard can lead to unintended negative consequences.

Nevertheless, I concur with the principle underlying practice #5 to the extent that I believe careful consideration needs to be given to how broadly to market the bonds, balancing the incremental effort involved with the likely incremental price pressure. FPL expects to develop, in conjunction with the underwriters and the Commission's representative and its advisor, a marketing plan prior to proceeding with the transaction. Mr. Olson addresses this issue in his testimony.

Q. Do you agree with practice #6?

A. I agree that, in general, the attributes of "transparency" and "accountability" are desirable. However, without any information as to what specific practices Mr. Fichera believes are necessary to achieve transparency and accountability, I cannot determine whether I am in agreement with the practice as stated.

Q. Do you agree with practice #7?

A. Generally yes. Subject to the reservations expressed earlier about clarity of decision-making authority, I believe the issues addressed in practice #7 should all be part of the evaluation of FPL's specific issuance approach that the Commission's representative and its financial advisor evaluate.

Q. Do you agree with practice #8?

A. No. For the reasons noted earlier I believe "lowest cost", as described by Mr. Fichera, is an inappropriate standard Nonetheless, if the company is asked to certify that it has taken all reasonable actions likely to lead to lowest cost, properly balanced by the other considerations I described earlier, we would do so.

Q. Do you agree with practice #9?

A. No. The financing documents are for the benefit of bondholders. We believe that Section 366.8260(15) already provides this protection for customers.

Q. Mr. Fichera provides a list of what he considers deficiencies in FPL's proposed financing order. Are there factors the Commission should consider in evaluating Mr. Fichera's suggested deficiencies in FPL's proposed financing order filed with FPL's petition?

A. Yes. As an introductory comment to Mr. Fichera's list of deficiencies, let me state that FPL's proposed form of financing order as well as proposed transaction documents were based upon industry precedent. In fact, Mr. Fichera admits in his testimony that the proposed transaction structure is consistent with most but not all other transactions. Mr. Fichera focuses upon one significant issue in our proposed form of financing order-that the FPL does not give "day of pricing" approval to the Commission or its Staff. I have discussed the reasons for our approach to the Commission's participation in the structuring, marketing and approval process above. As for the list of other "deficiencies" in our proposal cited by Mr. Fichera, we are happy to see that the list is short. But let me assure you that the Company did its homework, and each of these issues was carefully considered by us. In fact, some of these "deficiencies" do not exist, because they have already been addressed in our financing order and the transaction documents. I will address those factors by item number as they appear in Mr. Fichera's testimony on page 53.

In (1) we do not believe that the "negligence" standard is either customary or required in the marketplace to sell the storm recovery bonds. As for the protection of customers, Section 366.8260(15) provides express protection for them for FPL malfeasance under the servicing arrangement.

In (2), FPL has already stated in testimony that Section 366.8260(15) protects customers against losses from a servicer default.

In (3), Mr. Fichera states that FPL's proposed financing order should prohibit FPL from terminating the Servicing Agreement in the case of a Servicer default, without FPSC approval. While there is no such statement in FPL's proposed financing order, FPL's proposed form of servicing agreement prohibits FPL from voluntarily resigning as servicer unless FPL determines that it can no longer legally perform its services functions. This provision was included because FPL recognizes that the servicing functions are inextricably related to FPL's normal billing and collection activities. In addition the proposed form of financing order submitted by FPL prohibits the appointment of a successor servicer under the servicing agreement, without Commission consent, if such appointment would result in an increase in servicing fees greater than any threshold proposed in the financing order. These servicing agreement provisions are consistent with the protections afforded in other transactions, including transactions in which Mr. Fichera has participated.

In (4) Mr. Fichera states that FPL's proposed financing order is deficient because it does not "require that any Servicer "float" benefit to Florida ratepayers rather than FPL". The Servicer "float" pertains to any interest earnings on funds collected for repayment by FPL which have not yet been remitted to the trustee. FPL's proposed servicing agreement, as filed with the Commission, requires FPL to remit funds to the trustee on a daily basis. Consequently, all interest earnings accrue to the customer's benefit and there is no Servicer "float". FPL is uncertain how it could account for intraday earnings or adjustments related to the true-up of actual vs. forecast write-offs. These amounts are negligible and consequently, the agreement proposes that these amounts, positive or negative, will accrue to the Servicer.

In (5), Mr. Fichera recommends that FPL's financing order "mandate continuing disclosure to the SEC and the general public to increase liquidity for storm-recovery bonds and lower ratepayer costs". The SEC provides that if there are fewer than 300 investors in a security, the issuer may deregister the security and suspend SEC reporting requirements once the entity has filed at least one 10-K with the SEC. This practice has been routinely followed (and is expected by investors) in utility transition bond transactions. The deregistration of securities eliminates the need for annual audited financial statements as well as Sarbanes Oxley related certifications, reducing ongoing transaction costs to customers and liabilities to the company. Investors can continue to receive financial information from the trustee or from web sites maintained by the issuer. Consequently, I believe that mandating continuing disclosure to the SEC is not a preferable feature to include in FPL's financing order. FPL would agree to make continuing disclosure of specified transaction information available via a website.

In (6) Mr. Fichera contends that FPL's proposed financing order is deficient because it does not require FPL to "include an accurate description of credit risk in marketing documents." First, as FPL has not yet submitted the proposed form of its marketing materials, this statement seems premature, at best. But in anticipation of a request by Mr. Fichera to include in such marketing materials a statement evaluating the credit risk of the storm recovery bonds, I will respond. Any evaluation of credit risk is judgmental in nature, and thus not subject to an evaluation of accuracy. In other offerings, Mr. Fichera has recommended that language be included in the offering documents and marketing materials stating that "the broad-based nature of the true-up mechanism and the state pledge, serve to effectively eliminate, for all practical purposes and circumstances, any credit risk associated with the Bonds." While I can understand why a financial advisor might desire for an issuer to make such a statement, it is neither appropriate, nor customary for an issuer to make judgmental statements regarding the level of credit risk related to an investment in offering documents provided to the SEC or marketing materials governed by securities law. Credit risk can mean different things to different people. The SEC in its guidance to issuers is very clear that issuers are to provide investors with disclosure that is not misleading. Investors should form their own conclusions relative to an investment's risk characteristics through review of factual information provided by the issuer in offering documents and marketing materials and review of assessments of credit risk made by the rating agencies. If there are stress tests which illustrate the remoteness of the possibility that the storm recovery bonds would not be paid on time, and there is a perceived benefit, it would be far preferable to state the results of such tests in the offering documents to establish that conclusion. Instead of mandating the inclusion of a credit risk assessment, the Commission should instead be content with reminding FPL of its obligations to comply with federal securities law in its disclosure.

If the Commission chooses to make a finding or a conclusion regarding the credit risk of this security in the financing order as a statement of fact, FPL would include that statement in offering documents and marketing materials provided it was clearly identified in each instance that it was a conclusion of the Commission and not the Company.

Similarly, if Mr. Fichera desires to characterize the State's obligations under the financing order, as he does in testimony, as "direct, explicit, conditional and irrevocable", or to describe the role of the State and local governments a "payors of last resort" with respect to the charges, we will similarly include such statements as conclusions of the Commission, not the Company-as this language is not explicitly included in the statute.

In (7), Mr. Fichera states that FPL's proposed financing order is deficient because it does not "describe accurately the government's role in the transaction." I disagree completely with this claim. The description of the state pledge included in FPL's proposed financing order is taken directly from the statute. Mr. Fichera would prefer for the financing order to characterize the state pledge as a "guaranty." This, to my mind, would be an inaccurate description. While the words "pledge" and "guaranty" may be similar in meaning to the lay person, they may be viewed differently in the investment community. I believe it is most prudent and accurate to use the words chosen by the legislature when drafting the statute. However, if the Commission chooses to describe its covenant in the financing order and the statute as a guarantee, our offering document will quote the language of the financing order as statements of the Commission.

Q. **Would you please summarize the key points related to securitization that the Commission should consider as it determines what to include in its final ruling and/or in the financing order?**

A. Yes. First, and most important, the Commission should be clear in deciding and communicating which party will have final decision-making authority: the Commission acting through its representative, or FPL. I believe the former is less desirable, but subject to the limitation that FPL will always have to retain authority over its SEC disclosure, either can work. However, clarity is required.

Second, a "lowest cost" standard as described in Mr. Fichera's testimony, while superficially appealing, is inappropriate for this case. It cannot be objectively measured, it ignores other important non-cost criteria, and it creates the potential for abuse. A more comprehensive view of total cost which encompasses reasonable expediency and a balance of customer and company interests would be a more appropriate standard for the Commission to require. FPL fully intends to take all reasonable measures to get the best deal for customers consistent with the terms of the financing order, the market conditions at the time of pricing and the other considerations discussed in my testimony.

Third, contrary to Mr. Fichera's statements, we welcome the Commission and Staff's involvement in the issuance process and believe the general process that we have laid out readily accommodates it. We look forward to benefiting from the practical experience Saber Partners has gained in other securitization transactions. The process as we have laid it out, however, does provide that FPL has final decision-making authority and therefore seeks to have all input addressed and approvals given *before* specific decisions are made. It makes no provision for the Commission, the Staff, or the financial advisor to agree to a proposed decision and then subsequently say "no, we changed our minds." For this limitation I make no apologies. If the Commission chooses to assume final decision-making authority, then the specifics of the proposed issuance process would need to change.

Fourth, contrary to Mr. Fichera's and Mr. Noel's assertions, FPL recognizes that it has a very strong interest in this transaction being successful, reflected in very tight pricing, an efficient execution process, and a deal that is well recognized by key capital market participants. In this, our interests are aligned with customers. An excellent transaction is a key objective of the entire FPL Treasury team for 2006.

Q. Does this conclude your rebuttal testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida Power & Light Company.	Docket No. 050045-EI
In re: 2005 comprehensive depreciation study by Florida Power & Light Company.	Docket No. 050188-EI

STIPULATION AND SETTLEMENT

WHEREAS, pursuant to its petition filed March 22, 2005, Florida Power & Light Company (FPL) has petitioned the Florida Public Service Commission (FPSC or Commission) for an increase in base rates and other related relief;

WHEREAS, the Office of the Attorney General (AG), the Office of Public Counsel (OPC), The Florida Industrial Power Users Group (FIPUG), AARP, Florida Retail Federation (FRF), the Commercial Group (CG), the Federal Executive Agencies (FEA), and South Florida Hospital and Healthcare Association (SFHHA) have intervened, and have signed this Stipulation and Settlement (unless the context clearly requires otherwise, the term Party or Parties means a signatory to this Stipulation and Settlement);

WHEREAS, FPL and the Parties to this Stipulation and Settlement recognize that this is a period of unprecedented world energy prices and that this Stipulation and Settlement will mitigate the impact of high energy prices;

WHEREAS, FPL has provided the minimum filing requirements (MFRs) as required by the FPSC and such MFRs have been thoroughly reviewed by the FPSC Staff and the Parties to this proceeding;

WHEREAS, FPL has filed comprehensive testimony in support of and detailing its MFRs;

WHEREAS, on March 16, 2005, FPL filed comprehensive depreciation studies in accordance with FPSC Rule 25-6.0436(8)(a), Florida Administrative Code;

WHEREAS, the parties in this proceeding have conducted extensive discovery on the MFRs, depreciation studies, and FPL's testimony;

WHEREAS, the discovery conducted has included the production and opportunity to inspect more than 315,000 pages of information regarding FPL's costs and operations;

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the issues raised in these proceedings so as to maintain a degree of stability to FPL's base rates and charges, and to provide incentives to FPL to continue to promote efficiency through the term of this Stipulation and Settlement;

WHEREAS, FPL is currently operating under a stipulation and settlement agreement agreed to by OPC and other parties, and approved by the FPSC by Order PSC-02-0501-AS-EI, issued April 11, 2002, in Docket Nos. 001148-EI and 020001-EI (2002 Agreement);

WHEREAS, previous to the 2002 Agreement, FPL operated under a stipulation and settlement agreement approved by the FPSC in Order No. PSC 99-0519-AS-EI (1999 Agreement);

WHEREAS, the 1999 and 2002 Agreements, combined, provided for a reduction of $600 million in FPL's base rates, and include revenue sharing plans that have resulted in refunds to customers to date in excess of $225 million;

WHEREAS, the 1999 and 2002 Agreements and revenue sharing plans have provided significant benefits to customers, resulting in approximately $4 billion in total savings to FPL's customers through the end of 2005;

WHEREAS, during 2005 FPL has added two new power plants in Martin and Manatee Counties at installed costs totaling approximately $887 million without increasing base rates;

WHEREAS, FPL must make substantial investments in the construction of new electric generation and other infrastructure for the foreseeable future in order to continue to provide safe and reliable power to meet the growing needs of retail customers in the state of Florida; and

WHEREAS, an extension of the revenue sharing plan and preservation of the benefits for customers of the $600 million reduction in base rates provided for in the 1999 and 2002 Agreements during the period in which this Stipulation and Settlement is in effect, and other provisions as set forth herein, including the provision for the incremental base rate recovery of costs associated with the addition of electric generation, will further be beneficial to retail customers;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. Upon approval and final order of the FPSC, this Stipulation and Settlement will become effective on January 1, 2006 (the "Implementation Date"), and shall continue through December 31, 2009 (the "Minimum Term"), and thereafter shall remain in effect until terminated on the date that new base rates become effective pursuant to order of the FPSC following a formal administrative hearing held either on the FPSC's own motion or on request made by any of the Parties to this Stipulation and Settlement in accordance with Chapter 366, Florida Statutes.

2. FPL's retail base rates and base rate structure shall remain unchanged, except as otherwise permitted in this Stipulation and Settlement. The following tariff changes shall be approved and implemented:

a. (i) As reflected in FPL's MFR E-14, institution of the optional High Load Factor Time-of-Use rate with an adjustment to reflect a 65% load factor breakeven point by rate class, the Seasonal Demand Time-of-Use rate, and the General Service Constant Use Rate;

(ii) Elimination of the 10 kW exemption from rates.

(iii) The combined adjustments to implement (i) and (ii) above shall be made on a revenue neutral basis with reference to the 2006 forecast reflected in MFR E-13(c) at present base rates.

b. Raising the inversion point on the RS-1 rate from 750 kWh to 1,000 kWh, on a revenue neutral basis with reference to the 2006 forecast reflected in MFR E-13(c) at present base rates.

c. Consolidation and collection of all gross receipts taxes, including existing gross receipts taxes embedded in base rates, through the separate gross receipts tax line item on bills, on a revenue neutral basis with reference to the 2006 forecast reflected in MFR E-13(c) at present base rates.

d. At any time during the term of the Stipulation and Settlement and subject to Commission approval, any new or revised tariff provisions or rate schedules requested by FPL, provided that such tariff request does not increase any existing base rate component of a tariff or rate schedule during the term of the

Stipulation and Settlement unless the application of such new or revised tariff or rate schedule is optional to the utility's customers.

3. Except as provided in Section 1, no Party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. AG, OPC, FIPUG, AARP, FRF, FEA, CG, and SFHHA will neither seek nor support any reduction in FPL's base rates and charges, including interim rate decreases, to take effect prior to the end of the Minimum Term of this Stipulation and Settlement unless a reduction request is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect for meter readings before the end of the Minimum Term except as provided for in Section 6. During the term of this Stipulation and Settlement, except as otherwise provided for in this Stipulation and Settlement, or except for unforeseen extraordinary costs imposed by government agencies relating to safety or matters of national security, FPL will not petition for any new surcharges, on an interim or permanent basis, to recover costs that are of a type that traditionally and historically would be, or are presently, recovered through base rates.

4. During the term of this Stipulation and Settlement, revenues which are above the levels stated herein below in Section 5 will be shared between FPL and its retail electric utility customers -- it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment, and financial results of operations.

5. Commencing on the Implementation Date and for the calendar years 2006, 2007, 2008 and 2009, and continuing thereafter until terminated, FPL will be under a Revenue Sharing Incentive Plan as set forth below. For purposes of this Revenue Sharing Incentive Plan, the following retail base rate revenue threshold amounts are established:

a. Sharing Threshold - Retail base rate revenues between the sharing threshold amount and the retail base rate revenue cap as defined in Section 5(b) below will be divided into two shares on a 1/3, 2/3 basis. FPL's shareholders shall receive the 1/3 share. The 2/3 share will be refunded to retail customers. The sharing threshold for 2006 will be established by using the 2005 sharing threshold of $3,880 million in retail base rate revenues, increased by the average annual growth rate in retail kWh sales for the ten year period ending December 31, 2005. For each succeeding calendar year or portion thereof during which the Stipulation and Settlement is in effect, the succeeding calendar year retail base rate revenue sharing threshold amounts shall be established by increasing the prior year's threshold by the sum of the following two amounts: (i) the average annual growth rate in retail kWh sales for the ten calendar year period ending December 31 of the preceding year multiplied by the prior year's retail base rate revenue sharing threshold and (ii) the amount of any incremental GBRA revenues in that year. The GBRA is described in Section 17.

b. Revenue Cap - Retail base rate revenues above the retail base rate revenue cap will be refunded to retail customers on an annual basis. The retail base rate revenue cap for 2006 will be established by using the 2005 cap of $4,040 million in retail base rate revenues, increased by the average annual growth rate in retail kWh sales for the ten calendar year period ending December 31, 2005. For each succeeding calendar year or portion thereof during which the Stipulation and Settlement is in effect, the succeeding calendar year retail base rate revenue cap amounts shall be established by increasing the prior year's cap by the sum of the following two amounts: (i) the average annual growth rate in retail kWh sales for the ten calendar year period ending December 31 of the preceding year multiplied by the prior year's retail base rate revenue cap amount and (ii) the amount of any incremental GBRA revenues in that year.

c. Revenue exclusions - The Revenue Sharing Incentive Plan and the corresponding revenue sharing thresholds and revenue caps are intended to relate only to retail base rate revenues of FPL based on its current structure and regulatory framework. Thus, for example, incremental revenues attributable to a business combination or acquisition involving FPL, its parent, or its affiliates, whether inside or outside the state of Florida, or revenues from any clause, surcharge or other recovery mechanism other than retail base rates, shall be excluded in determining retail base rate revenues for purposes of revenue sharing under this Stipulation and Settlement.

d. Refund mechanism - Refunds will be paid to customers as described in Section 7.

e. Calculation of sharing threshold and revenue cap for partial calendar years – In the event that this Stipulation and Settlement is terminated other than at the end of a calendar year, the sharing threshold and revenue cap for the partial calendar year shall be determined at the end of that calendar year by (i) dividing the retail kWh sales during the partial calendar year by the retail kWh for the full calendar year, and (ii) applying the resulting fraction to the sharing threshold and revenue cap for the full calendar year that would have been calculated as set forth in Sections 5(a) and 5(b) above.

f. Calculation of annual average growth rate - For purposes of this Section 5, the average annual growth rate shall be calculated by summing the percentage change in retail kWh sales for each year in the relevant ten year period and dividing by 10.

6. If FPL's retail base rate earnings fall below a 10% ROE as reported on an FPSC adjusted or pro-forma basis on an FPL monthly earnings surveillance report during the term of this Stipulation and Settlement, FPL may petition the FPSC to amend its base rates notwithstanding the provisions of Section 3, either as a general rate proceeding or as a limited proceeding under Section 366.076, Florida Statutes. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding, and, in the event that FPL petitions to initiate a limited proceeding under this Section 6, any Party may petition to initiate any proceeding otherwise permitted by Florida law. This Stipulation and Settlement shall terminate upon the effective date of any Final Order issued in such proceeding that changes FPL's base rates. This paragraph shall not be construed to bar or limit FPL from any recovery of costs otherwise contemplated by this Stipulation and Settlement.

7. All revenue-sharing refunds will be paid with interest at the 30-day commercial paper rate to retail customers of record during the last three months of each applicable refund period based on their proportionate share of base rate revenues for the refund period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding refund period. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable refund period (or, in the case of a partial calendar year refund, after the end of that calendar year). Refunds to former customers will be completed as expeditiously as reasonably possible.

8. Starting with the effective date of this Stipulation and Settlement, FPL may, at its option, amortize up to $125,000,000 annually as a credit to depreciation expense and a debit to the bottom line depreciation reserve over the term of this Stipulation and Settlement. Any such

reserve amount will be applied first to reduce any reserve excesses by account, as determined in FPL's depreciation studies filed after the term of this Stipulation and Settlement, and thereafter will result in reserve deficiencies. Any such reserve deficiencies will be allocated to individual reserve balances based on the ratio of the net book value of each plant account to total net book value of all plant. The amounts allocated to the reserves will be included in the remaining life depreciation rate and recovered over the remaining lives of the various assets. Additionally, depreciation rates and/or capital recovery schedules shall be established pursuant to the comprehensive depreciation studies as filed March 16, 2005 and will not be changed for the term of this Stipulation and Settlement.

9. FPL will be permitted clause recovery of prudently incurred incremental costs associated with the establishment of a Regional Transmission Organization or any other costs arising from an order of the FPSC or the Federal Energy Regulatory Commission addressing any alternative configuration or structure to address independent transmission system governance or operation. Any Party to this Stipulation and Settlement may participate in any proceeding relating to the recovery of costs contemplated in this section for the purpose of challenging the reasonableness and prudence of such costs, but not for the purpose of challenging FPL's right to clause recovery of such costs.

10. No Party to this Stipulation and Settlement shall appeal the FPSC's Final Order in Docket No. 041291-EI. Further, Parties agree to the following provisions relative to the target level and funding of Account No. 228.1 and recovery of any deficits in such Account:

a. The target level for Account No. 228.1 shall be as established by the Commission, whether on its own motion, upon petition by FPL, or in conjunction with a proceeding held in accordance with Section 366.8260, Florida Statutes. FPL will be permitted to recover prudently incurred costs associated with events covered by Account No. 228.1 and replenish Account No. 228.1 to a target level through charges to customers, that are approved by the Commission, that are independent of and incremental to base rates and without the application of any form of earnings test or measure. The fact that insufficient funds have been accumulated in Account No. 228.1 to cover costs associated with events covered by that Account shall not be evidence of imprudence or the basis of a disallowance. Replenishment of Account No. 228.1 to a target level approved by the Commission and/or the recovery of any costs incurred in excess of funds accumulated in Account No. 228.1 and insurance shall be accomplished through Section 366.8260, Florida Statutes, and/or through a separate surcharge that is independent of and incremental to retail base rates, as approved by the Commission. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding, nor precluded from challenging the amount of such target level or whether recovery should be accomplished either through Section 366.8260, Florida Statutes or through a separate surcharge.

b. The current base rate accrual to Account No. 228.1 of $20.3 million is suspended effective January 1, 2006.

c. No revenues contemplated by this Section 10 shall be included in the computation of retail base rate revenues for purposes of revenue sharing under this Stipulation and Settlement.

11. The current decommissioning accrual of $78,516,937 (jurisdictional) approved in Order No. PSC-02-0055-PAA-EI shall be suspended effective September 1, 2005 and shall remain suspended through the Minimum Term and, at the Company's option, for any additional period during which this Stipulation and Settlement remains in effect. FPL's decommissioning study to be filed on or before December 31, 2005 shall have no impact on FPL's base rates, charges, or the terms of this Stipulation and Settlement.

12. The portion of St. Johns River Power Park ("SJRPP") capacity costs and certain capacity revenues that are currently embedded in base rates shall continue to be recovered through base rates in the current manner as contemplated by Order No. PSC-92-1334-FOF-EI.

13. New capital costs for environmental expenditures recovered through the Environmental Cost Recovery Clause will be allocated, for the purpose of clause recovery, consistent with FPL's current cost of service methodology.

14. Post-September 11, 2001 incremental security costs shall remain in and be recovered through the Capacity Clause.

15. For surveillance reporting requirements and all regulatory purposes, FPL's ROE will be calculated based upon an adjusted equity ratio as follows. FPL's adjusted equity ratio will be capped at 55.83% as included in FPL's projected 1998 Rate of Return Report for surveillance purposes. The adjusted equity ratio equals common equity divided by the sum of common equity, preferred equity, debt and off-balance sheet obligations. The amount used for off-balance sheet obligations will be calculated per the Standard & Poor's methodology.

16. Effective on the Implementation Date, FPL will continue to operate without an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the

revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels, but an ROE of 11.75% shall be used for all other regulatory purposes.

17. For any power plant that is approved pursuant to the Florida Power Plant Siting Act (PPSA) and achieves commercial operation within the term of this Stipulation and Settlement, the costs of which are not recovered fully through a clause or clauses, FPL's base rates will be increased by the annualized base revenue requirement for the first 12 months of operation, reflecting the costs upon which the cumulative present value revenue requirements (CPVRR) were or are predicated, and pursuant to which a need determination was granted by the FPSC, such adjustment to be reflected on FPL's customer bills by increasing base charges, and non-clause recoverable credits, by an equal percentage. FPL will begin applying the incremental base rate charges required by this Stipulation and Settlement to meter readings made on and after the commercial in service date of any such power plant. Such adjustment shall be referred to as a Generation Base Rate Adjustment (GBRA). The GBRA will be calculated using an 11.75% ROE and the capital structure as per Section 15 above. FPL will calculate and submit for Commission confirmation the amount of the GBRA using the Capacity Clause projection filing for the year that the plant is to go into service. In the event that the actual capital costs of generation projects are lower than were or are projected in the need determination proceeding, the difference will be flowed back via a true-up to the Capacity Clause. In the event that actual capital costs for such power plant are higher than were projected in the need determination proceeding, FPL at its option may initiate a limited proceeding per Section 366.076, Florida Statutes, limited to the issue of whether FPL has met the requirements of Rule 25-22.082(15), Florida Administrative Code. If the Commission finds that FPL has met the requirements of Rule 25-22.082(15), FPL shall increase the GBRA by the corresponding incremental revenue

requirement due to such additional capital costs. However, FPL's election not to seek such an increase in the GBRA shall not preclude FPL from booking any incremental costs for surveillance reporting and all regulatory purposes subject only to a finding of imprudence or disallowance by the Commission. Upon termination of the Stipulation and Settlement, FPL's base rate levels, including the effects of any GBRA, shall continue in effect until next reset by the Commission. Any Party to this Stipulation and Settlement may participate in any such limited proceeding for the purpose of challenging whether FPL has met the requirements of Rule 25-22.082(15). A GBRA shall be implemented upon commercial operation of Turkey Point Unit 5, currently projected to occur in mid-2007, by increasing base rates by the estimated annual revenue requirement exclusive of fuel of the costs upon which the CPVRR for Turkey Point Unit 5 were predicated, and pursuant to which a need determination was granted by the FPSC in Order No. PSC-04-0609-FOF-EI, such adjustment to be reflected on FPL's customer bills by increasing base charges and non-clause recoverable credits, by an equal percentage. FPL will begin applying the incremental base rate charges required by this Stipulation and Settlement to meter readings made on and after the commercial in service date of Turkey Point Unit 5.

18. This Stipulation and Settlement is contingent on approval in its entirety by the FPSC. This Stipulation and Settlement will resolve all matters in these Dockets pursuant to and in accordance with Section 120.57(4), Florida Statutes. This Docket will be closed effective on the date the FPSC Order approving this Stipulation and Settlement is final.

19. All Parties to this Stipulation and Settlement agree to endorse and support the Stipulation and Settlement before the FPSC and any other administrative or judicial tribunal, and in any other forum.

20. This Stipulation and Settlement dated as of August 22, 2005 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408

By: ____________________
W. G. Walker, III

Charles J. Crist, Jr., Attorney General
Office of the Attorney General
The Capitol-PL01
Tallahassee, FL 32399-1050

By: ____________________
Charles J. Crist, Jr., Esq.

Office of Public Counsel
c/o The Florida Legislature
111 West Madison St, Suite 812
Tallahassee, FL 32399-1400

By: ____________________
Harold A. McLean, Esq.

Florida Industrial Power Users Group

McWhirter, Reeves P.A.
400 North Tampa Street
Suite 2450
Tampa, FL 33602

By: ____________________
John W. McWhirter, Esq.

South Florida Hospital & Healthcare Assoc.

Andrews Kurth LLP
1701 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

By: ____________________
Kenneth L. Wiseman, Esq.

The Commercial Group

McKenna Long & Aldridge LLP
One Peachtree Center
303 Peachtree Street NE, Suite 5300
Atlanta, GA 30308

By:________________________
Alan R. Jenkins, Esq.

AARP

Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256

By:________________________
Michael B. Twomey, Esq.

Florida Retail Federation

Landers & Parsons, P.A.
310 West College Avenue
Tallahassee, FL 32301

By:________________________
Robert Scheffel Wright, Esq.

Federal Executive Agencies

Major Craig Paulson, Esq.
139 Barnes Drive
Tyndall Air Force Base, FL 32403

By:________________________
Major Craig Paulson, Esq.

Common Cause, Florida
& individual Customers

The pages provided are an excerpt from the whole document. The entire document can be found at http://www.psc.state.fl.us/

related to Hurricane Katrina of $261,000. Schedule 2, line 12 of my exhibit reflects the estimates of insurance reimbursements for each storm.

Q. What was the total amount of recoverable costs charged to the Reserve for Hurricanes Dennis and Katrina?

A. The total amount of recoverable costs charged to the Reserve was $53.4 million for Hurricanes Dennis and Katrina. This amount excludes estimated insurance reimbursements, normal capital costs including cost of removal, and operation and maintenance expenses normally recovered through base rates as shown on Schedule 2 of my exhibit.

These exclusions were made voluntarily by the Company consistent with the treatment in the negotiated Stipulation and Settlement with the Office of Public Counsel and the Florida Industrial Power Users Group that was approved by the FPSC in Order No. PSC-05-0250-PAA-EI.

Q. Please describe the adjustments made to exclude the capital costs and cost of removal from the amount charged to the Reserve.

A. As shown on Schedule 2 of my exhibit, the Company excluded $7.1 million of estimated capital costs and $628,000 for estimated cost of removal from the total costs charged to the Reserve. These capital costs represent the portion of capital expenditures and cost of removal related to recovery from Hurricanes Dennis and Katrina equal to the normal amount that would be charged to capital accounts under normal operating conditions. The restoration costs charged to the Reserve include that portion of the otherwise capitalized charges that exceeds the normal amount that would be charged to capital accounts under normal operating conditions.

Q. Please describe the adjustments to exclude an estimate of the operation and maintenance expenses normally recovered through base rates from the total amount of recoverable costs charged to the Reserve for Hurricanes Dennis and Katrina.

A. As shown on Schedule 2 of my exhibit, the Company has voluntarily made an adjustment to deduct $1.6 million from the recoverable costs charged to the Reserve for Hurricanes Dennis and Katrina. This amount was identified by the Company as the portion of the storm restoration costs which could be considered normal operating expenses that would typically be recovered through base rates. A breakdown of the estimated normal operating costs is included on Schedule 3 of my exhibit. These costs include the portion of straight-time labor and company-owned vehicle costs for Gulf employees associated with storm restoration activity that would normally be expensed; the budgeted level for tree trimming contract labor for the number of restoration days associated with Dennis and Katrina; and normal or budgeted overtime labor charges and materials and supplies for the days of restoration.

Q. Please explain the interest amount included on Schedule 2, line 22 of your exhibit.

A. I have added $905,000 in interest to the Dennis and Katrina storm-recovery costs in accordance with Section 366.8260 (1) (n) of the Florida

OPEN MEETING COVER SHEET

MEETING DATE: **SEPTEMBER 21, 2005**

AGENDA ITEM NO.: **27**

CAPTION: *Discussion Regarding the Issuance of Transition Bonds by CenterPoint Authorized by Docket No. 30485*

ACTION REQUESTED: **COMMISSIONER SMITHERMAN MEMO**

Distribution List:

Commissioners' Office (7)
Adib, Parviz
Featherston, David
Journeay, Stephen
Tietjen, Darryl
Lanford, Lane
Mueller, Paula
Renfro, Mike
Hunter, Tom
Totten, Jess
Luna, Beverly
Whittington, Pam
Central Records

Public Utility Commission of Texas

Memorandum

TO: Commissioner Julie Parsley
Chairman Paul Hudson

FROM: Commissioner Barry T. Smitherman BTS

RE: September 21, 2005 Open Meeting Item No. 27

Discussion Regarding the Issuance of Transition Bonds by CenterPoint Authorized by Docket No. 30485

DATE: September 21, 2005

From the very beginning of my tenure here at the Commission, I have stressed the importance of competition. Whether it is the ability of electricity customers to choose the retail electric provider of their choice, the ability of traditional telephone providers to provision an alternative video choice for consumers, or the selection of vendors by the Commission itself, consumers, in my opinion, always benefit from firms competing against each other for that consumer's "hard-earned dollar."

Recent examples proving this axiom are apparent. ERCOT recently entered into an interest-rate-swap transaction for some of its floating-rate debt. The net effect of this swap is to "cap" ERCOT's exposure, in the future, to rising short-term interest rates. Initially, ERCOT was in discussion with its traditional banking relationship about provisioning this swap. At my suggestion, ERCOT conducted a competitive bid process, which was won by a superior bid provided by a financial-services firm that was not ERCOT's traditional bank. The end result was a better economic result for ratepayers.

Similarly, after not doing so in previous transactions, Commission staff issued an RFP for financial advisor associated with CenterPoint's issuance of transition bonds. While several firms submitted responses, the ultimate winner was the same firm that the Commission has traditionally used; however, the fee to be paid is approximately 46% of what was paid to that firm in the last transition-bond financing. With these examples as a backdrop, I want to solicit your opinion(s) on the following themes:

Theme #1:"More is better than fewer." While I have not seen the individual responses, I understand that approximately 14 firms responded to an RFI for sole or joint book running managing underwriter sent out by the Commission, CenterPoint and our financial advisor, relating to the issuance of approximately $1.8 billion in transition bonds. Of the 14 respondents, I would characterize only six or so of the respondents as either "Wall Street" firms or "money center" banks. Unfortunately, another six Wall Street, or money center, banks, all of which have previously been involved in one or more of the preceding four Texas transition bond financings, chose not to respond to the RFI. While we still have several large, well capitalized firms to choose from (along with several international banks and regional and minority firms), it is my opinion that competition is more keen and consumers always benefit when they have more, rather than fewer, qualified entities competing for that hard earned dollar. In this regard, I am extremely frustrated and disappointed that firms that have previously made money off Texas ratepayers chose not to even compete for the business this go-round. To the extent that we will be soliciting additional vendors in the future—either investment banks, law firms, accountants, advisors, consultants, etc.—I would hope that we will see robust responses from qualified industry participants.

Theme #2:"All things being equal, price matters the most." The Commission has delegated to CenterPoint and our financial advisor the selection of investment banks to market and potentially underwrite transition bonds associated with CenterPoint's stranded cost recovery amount. The RFI (mentioned in the preceding paragraph) contained a number of questions, including one that asked how much these firms would require in compensation if they were selected as either sole or joint book running manager. Among equally qualified firms, it would be my hope that the investment bank(s) providing the least cost transaction to Texas ratepayers would be the one(s) selected by CenterPoint and our financial advisor to serve in a lead role. Similarly, I would hope that CenterPoint and our financial advisor will employ some sort of competitive process in selecting, among equally qualified firms, the various law firms that will ultimately be required for the documentation, marketing, and execution of the proposed financing.

Theme #3: "Sooner is better than later." As you know, ratepayers in CenterPoint's service territory are accruing interest at more than 11% until such time as CenterPoint recovers all or a portion of its stranded costs through a transition-bond financing. Additionally, as was evidenced yesterday by the Federal Reserve's move to raise short-term interest rates another quarter point to 3.75%, interest rates, especially short-term rates, are more likely to continue rising for the remainder of 2005. It would be my hope that you would join with me in expressing dissatisfaction with any action or inaction, by any party involved in the transaction, that has the potential effect of delaying the pricing of these bonds and the closing of this transaction.

I look forward to our conversation on this topic at the open meeting.

be made with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service.

2. In a financing order issued to an electric utility, the commission shall:

a. Except as provided in sub-subparagraph d. and in subparagraph 4., specify the amount of storm recovery costs and describe and estimate the amount of financing costs that may be recovered through storm recovery charges and the period over which such costs may be recovered.

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

c. Ensure that the marketing, structuring, pricing, and financing costs of the storm recovery bonds will result in the lowest cost of the funds and the lowest storm recovery charges that are consistent with market conditions and the terms of the financing order.

d. Provide that, for the period specified pursuant to sub-subparagraph a., the imposition and collection of storm recovery charges authorized in the financing order shall be paid by all customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even in the event the customer elects to purchase electricity interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service.

2. In a financing order issued to an electric utility, the commission shall:

a. Except as provided in sub-subparagraph d. and in subparagraph 4., specify the amount of storm-recovery costs and the level of storm-recovery reserves, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs, and describe and estimate the amount of financing costs that may be recovered through storm-recovery charges and specify the period over which such costs may be recovered.

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

c. Provide that, for the period specified pursuant to sub-subparagraph a., the imposition and collection of storm-recovery charges authorized in the financing order shall be paid by all customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the state.

Docket No. 060038-EI
M.Dewhurst, Exhibit No. ____
Document No. MPD-9, Page 1 of 1
Storm Recovery Bond Issuance Process

Storm Recovery Bond Issuance Process

	Financing Order Requirements	**Suggested Timetable of Collaboration Process**
		Review and Comment on transaction documents
Financing Order Issued	Transaction documents subject to changes for rating agency compliance.	Develop S-3
		Develop Transaction Timeline
		Review of Draft Marketing Materials Make necessary changes to transaction documents Select Underwriter's and other transaction participants Develop Marketing Plan
		Finalize Structure Finalize Internet Roadshow
30 days prior to launch	Revised Sale Agreement, Revised Servicing Agreement, Revised Administration Agreement and Revised Bond Indenture	Marketing Period Begins
10 days prior to launch	Registration Statement Term Sheet Forms of any legal opinions	
5 days prior to launch	**Draft Issuance Advice Letter including:** - Expected and final maturities -Over-collateralization levels -Other credit enhancements -Revised estimates of upfront issuance costs - Estimate of debt service and other ongoing costs for the first collection preriod - Proforma bond structure and coupons **Draft Initial True-Up Letter including:** - Revised estimate of Storm Bond Repayment Charge and Storm Bond Tax Charge for each customer class - Draft tariff sheets	Regular Briefings
2 days prior to launch	Staff to provide a Structuring Disapproval Letter if warranted	Review pricing book
1 day prior to launch		Discuss Preliminary Pricing Guidance
Transaction Launch		Review pricing book Discuss Final Pricing
Transaction Pricing		Pricing call
48 hours after pricing	Final Issuance Advice Letter Completed True-Up Letter including the initial Storm Bond Repayment Charge and Storm Bond Tax Charge for each customer class	
72 hours after pricing	Staff adiministrative approval of initial storm charges	

FPL expects that there will be periodic, scheduled discussions between the Commission's representative, its advisor, FPL and their advisor/underwriters which will increase in frequency as launch date approaches.

AGREEMENT BETWEEN THE STATE OF FLORIDA FLORIDA PUBLIC SERVICE COMMISSION AND SABER PARTNERS, LLC SABER CAPITAL PARTNERS, LLC FOR FINANCIAL ADVISORY AND EXPERT WITNESS SERVICES

This AGREEMENT is entered into by and between the Florida Public Service Commission (the "AGENCY"), an agency of the State of Florida, with headquarters located at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0860, and Saber Partners, LLC and Saber Capital Partners, LLC (the "FINANCIAL ADVISOR") located at 44 Wall Street, New York, New York 10005. This agreement shall bind the parties upon its execution by their representatives. The effective date of this agreement is the date of the last signature at the end of this agreement.

Whereas, the FINANCIAL ADVISOR is needed to provide financial advisory and expert witness services to the AGENCY with respect to all proposals to issue storm recovery bonds by investor-owned electric utilities (IOUs) filed on or before September 1, 2006, pursuant to Section 366.8260, Florida Statutes.

Whereas, the FINANCIAL ADVISOR has the expertise necessary to perform the duties and responsibilities outlined in this agreement.

Now, therefore, the parties agree as follows:

ARTICLE I - SCOPE OF SERVICES

For any IOU petition filed with the AGENCY pursuant to Section 366.8260, Florida Statutes, on or before September 1, 2006, the FINANCIAL ADVISOR agrees to perform services as directed in writing by the AGENCY's Project Manager, including but not limited to:

1. Review the petition and all testimony, exhibits, responses to interrogatories, responses to

requests for production of documents, deposition transcripts, hearing transcripts; and post-hearing briefs.

2. Assist in the preparation of discovery including, but not limited to, the formulation of interrogatories, requests for production of documents, and participation in depositions necessary to support the review and analysis of a petition.

3. Prepare, provide, and defend (including, but not limited to, responding to interrogatories, requests for production of documents, and depositions initiated by the parties to a docketed proceeding on a petition) expert testimony on topics identified by the Project Manager.

4. Review the proposed financing costs, structuring of the bond issuance, expected pricing of the bonds, and terms and conditions of the bonds. This task may include a review and analysis of the use of bond financing techniques similar to storm recovery bonds in other states by other commissions and advising the AGENCY staff as to the range of techniques available. Advise the AGENCY staff of the findings and make recommendations for any modifications in the financing program.

5. Analyze whether the financing proposed in the petition would be reasonably expected to result in lower overall costs, or would avoid or significantly mitigate rate impacts to customers, than would alternative methods of financing or recovering storm recovery costs, and make recommendations for any modifications. This task may include the identification of opportunities for statewide programmatic savings and economies of scale.

6. Recommend the method of the sale of the storm recovery bonds which will reasonably be expected to result in the lowest possible borrowing cost.

7. Assist in the preparation of the financing order as directed by the AGENCY's Project Manager. This task may include surveying financing orders used by other commissions in conjunction with similar bond financings and advising the AGENCY staff on options for the AGENCY to consider in developing its storm recovery finance program so as to reduce ratepayer costs. This task may also include identifying appropriate conditions that the AGENCY should consider incorporating in its financing order pursuant to Section 366.8260(2)(b)2.j.

8. Review documents associated with the final bond issuance, monitor the actual solicitation of the bonds, and determine whether all reasonable and customary due diligence has been performed on the part of the IOU, the IOU's counsel, the IOU's bond underwriter, and the IOU's financial advisors.

9. Provide updates on the status of the bond issuance and information on market conditions as directed by the AGENCY's Project Manager.

10. Provide a statement of the FINANCIAL ADVISOR's opinion as to the fairness or reasonableness of the timing of the sale, the gross underwriting spread, and the pricing of the storm recovery bonds.

11. Assist the AGENCY staff in its review of information submitted by the IOU on the actual costs of the storm recovery bond issuance pursuant to the statute.

12. Perform other services solely within the scope of this agreement as requested by the AGENCY's Project Manager.

13. The FINANCIAL ADVISOR shall not knowingly perform any services that may require registration as a securities broker or dealer without first notifying the Project Manager of such requirement and obtaining specific written authorization from the Project Manager for such services.

14. The FINANCIAL ADVISOR shall not employ legal counsel in conjunction with the performance of any services without first notifying the Project Manager of its intent to do so and obtaining specific written authorization from the Project Manager for the use of legal counsel in providing such services.

ARTICLE II – ADMINISTRATION AND STANDARDS OF AGREEMENT

1. The AGENCY designates Tim Devlin, Director of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0863, phone (850) 413-6400, fax (850) 413-66401, and e-mail tdevlin@psc.state.fl.us as its Project Manager. Day-to-day communications concerning case strategy and substantive content of work product shall be directed to Tim Devlin.

2. The AGENCY designates Christiana T. Moore, Associate General Counsel, Office of the General Counsel, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-7019, phone (850) 413-6098, fax (850) 413-6099, and e-mail cmoore@psc.state.fl.us as its Contract Manager. Communications other than day-to-day communications concerning case strategy and substantive content of work product shall be directed to Christiana T. Moore.

3. The FINANCIAL ADVISOR designates Joseph S. Fichera as its Contract Manager who shall act as liaison for the purposes of this agreement and to whom all communications shall be directed. Communications shall be directed to Joseph S. Fichera phone (212)461-2370, fax (212) 461-2371, and email jfichera@saberpartners.com.

4. The FINANCIAL ADVISOR shall comply with the AGENCY standards applicable to the handling of proprietary or confidential information, attached to this agreement as ATTACHMENT 1 and incorporated by reference.

ARTICLE III - PROFESSIONALS ASSIGNED TO CONTRACT

1. Listed below are the FINANCIAL ADVISOR's professionals who will be available to work for the AGENCY. Each individual is placed within the appropriate hourly compensation category (further described in Article V of this agreement).

Senior Management

Name	Title
Joseph S. Fichera	CEO
Jeremy Tennenbaum	Senior Managing Director
Michael Noel	Senior Managing Director
June Reed	Managing Director
Becky Klein	Senior Advisor/Board
Martha Elvey	Senior Advisor
Paul S. Sutherland	Senior Advisor
Robert Gee	Senior Advisor/Board
Fred Grygiel	Senior Advisor

Other Professionals

Name	Title
Taylor Nance	Vice President
Ross Comeaux	Associate

2. The FINANCIAL ADVISOR shall assign, in consultation with and subject to approval by the AGENCY's Project Manager, the individuals listed in this contract to the various projects to be completed under the agreement. The AGENCY has the right to approve or disapprove any proposed changes in the FINANCIAL ADVISOR's staff from the named individuals. The AGENCY shall be

provided with a résumé of any proposed substitute and shall be given the opportunity to interview that person prior to its decision to approve or disapprove.

ARTICLE IV – DELIVERABLES

1. All deliverables shall be provided in a timely manner to the AGENCY's Project Manager as required to meet the schedule for the proceeding established by the AGENCY's Order Establishing Procedure (OEP) and any subsequent revisions to the OEP by the Prehearing Officer or the Commission.

2. The FINANCIAL ADVISOR shall coordinate, through the Project Manager, with the legal and technical staff of the AGENCY to provide, in a timely manner, input into the formulation of interrogatories, requests for production of documents, and depositions necessary to support the FINANCIAL ADVISOR's review and analysis of an IOU's petition and direct testimony. The FINANCIAL ADVISOR shall also coordinate, through the Project Manager, with the legal and technical staff of the AGENCY to provide, in a timely manner, responses to interrogatories, requests for production of documents, and depositions directed by the parties to the FINANCIAL ADVISOR as a result of the testimony filed by the FINANCIAL ADVISOR's designated representatives.

3. If required by the Project Manager, a draft copy of the testimony of the FINANCIAL ADVISOR's designated representatives shall be delivered to the AGENCY's Project Manager two weeks prior to the date specified for the filing of staff testimony in the OEP and any subsequent revisions. A final copy of the testimony of the FINANCIAL ADVISOR's designated representatives shall be delivered to the AGENCY's Project Manager one week prior to the date specified for the filing of staff testimony in the OEP and any subsequent revisions.

4. The FINANCIAL ADVISOR agrees that its designated representatives will appear, present, and defend their testimony before the AGENCY at its headquarters in Tallahassee, Florida, on the dates and times set for hearing in the OEP and any subsequent revisions.

5. The FINANCIAL ADVISOR agrees to provide a statement of the FINANCIAL ADVISOR's opinion as to the fairness or reasonableness of the timing of the sale, the gross underwriting spread, and the pricing of the storm recovery bonds.

ARTICLE V - COMPENSATION

1. Pursuant to Section 366.8260(2)(b)2.j., Florida Statutes, the compensation due the FINANCIAL ADVISOR for services performed pursuant to this agreement and reimbursement for allowable expenses shall be included as part of the financing costs to be paid from the proceeds of the bond issuance as the AGENCY directs in the financing order. The FINANCIAL ADVISOR acknowledges that it will be not be compensated from funds appropriated to the AGENCY and that the AGENCY cannot guarantee issuance of the bonds or any payment.

2. The FINANCIAL ADVISOR shall be compensated on an hourly basis. Specified below are two hourly fees for work. The first hourly fee is for individuals who are compensated at a Senior Management level while the second is for individuals who are compensated as Other Professionals. Except as provided below, these two hourly fees include all related costs and expenses, including, but not limited to, overhead and support staff for each level. Expenses eligible for reimbursement as part of the financing costs to be paid from the proceeds of the bond issuance are: actual direct out-of-pocket expenses for long distance telephone charges, long distance courier services, third party printing and copying charges, delivery charges, computer-assisted research services, and reasonable

and customary direct out-of-pocket expenses for travel (including airfare a: coach rates), and lodging. Meals while not in travel status and entertainment expenses are not eligible for reimbursement. Eligible expenses will also include similar expenses incurred by any lega. counsel employed by the Financial Advisor with the prior written consent of the Project Manager. Reimbursable travel must be authorized in writing by the AGENCY Project Manager prior to commencement. Expense documentation shall accompany the FINANCIAL ADVISOR's request for reimbursement.

Fee for:	Senior Management	$245 per hour
	Legal Counsel (if authorized)	$245 per hour
	Other Professionals	$175 per hour

3. The hours worked that are eligible for compensation will be approved by the AGENCY on the basis of the actual time worked by each employee within each of the two categories for work which the AGENCY's Project Manager requests the FINANCIAL ADVISOR to perform. The Project Manager may require an estimate of the total number of hours contemplated by the FINANCIAL ADVISOR for each task assigned and may approve performance of the task based on that estimate. The FINANCIAL ADVISOR shall notify the Project Manager in advance, and obtain additional authorization to continue, if it appears that the estimated hours for any task will be exceeded by more than 10 percent.

4. All bills for fees or other compensation for services or expenses shall be submitted on a monthly basis to the AGENCY Contract Manager by the FINANCIAL ADVISOR in detail sufficient for a proper pre-audit and post-audit thereof. A description of the services provided, the identity of the person(s) who performed the services, and the amount of time expended in performing the

services, including the day on which the services are performed, shall accompany the invoice for such charges. Approved bills shall be payable from the proceeds of the applicable bond issuance, upon closing, in immediately available funds.

5. The AGENCY is exempted from payment of Florida state sales and use taxes and federal excise tax. The FINANCIAL ADVISOR, however, shall not use the AGENCY's tax exemption number to secure any materials or services. The FINANCIAL ADVISOR shall be responsible and liable for the payment of all FICA/Social Security and other taxes resulting from this Agreement.

6. The FINANCIAL ADVISOR shall not pledge the AGENCY's credit or make the AGENCY a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness.

ARTICLE VI – TERMINATION OF AGREEMENT

1. This contract between the AGENCY and the FINANCIAL ADVISOR shall terminate September 1, 2006, unless renewed by the AGENCY as provided herein; provided, however, that the FINANCIAL ADVISOR shall continue to work on any petition filed on or before such date. At the option of the Executive Director of the AGENCY, upon written agreement of the parties, the contract may be renewed for two additional one-year periods on the same terms and conditions as this original contract.

2. If, for any reason, the FINANCIAL ADVISOR shall fail to fulfil the obligations under this contract in a timely and proper manner, the AGENCY may notify the FINANCIAL ADVISOR by written notice of default. Should the FINANCIAL ADVISOR fail to remedy such default or fail to present a plan acceptable to the AGENCY to remedy such default within 10 days after receipt of

such written notice, the AGENCY shall have the right to terminate the contract. In addition, the contract may be unilaterally cancelled by the AGENCY for refusal by the FINANCIAL ADVISOR to allow public access to all documents, papers, letters or other material, whether made or received by the FINANCIAL ADVISOR in conjunction with the contract, that are subject to Chapter 119, Florida Statutes, Public Records.

3. The AGENCY or the FINANCIAL ADVISOR may terminate this contract for any reason by giving written notice to the FINANCIAL ADVISOR (or to the AGENCY in the case of a termination elected by the FINANCIAL ADVISOR) at least 21 days before the termination date. In this event, the FINANCIAL ADVISOR shall be entitled to be compensated for any satisfactory work previously authorized by the AGENCY and completed prior to the termination date, but only from the proceeds of any bond issuance, in the manner provided in Article V Paragraph 1 as directed by the AGENCY in the financing order.

4. In the event this contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and other products prepared by or for the FINANCIAL ADVISOR under the contract shall be made available to and for the exclusive use of the AGENCY. Notwithstanding the above, the FINANCIAL ADVISOR shall not be relieved of liability to the AGENCY for damages sustained by the AGENCY by virtue of any breach of the contract by the FINANCIAL ADVISOR.

ARTICLE VII – GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO THIS AGREEMENT

1. The products of this contract prepared exclusively for the AGENCY shall be the sole and exclusive property of the AGENCY upon completion or other termination of the contract. The FINANCIAL ADVISOR shall deliver to the AGENCY copies of any and all materials pertaining to the contract. The FINANCIAL ADVISOR may make reasonable reference to these products in the conduct of its business and may use them as examples of the FINANCIAL ADVISOR's work product for other potential clients.

2. This Agreement may not be assigned, changed, amended or modified in any manner except by written instrument executed by authorized representatives of both parties in accordance with the terms of the Agreement, provided, however, that any activities of Saber Partner, LLC under this Agreement that may require registration as a securities broker or dealer may be assigned by Saber Partners, LLC in its discretion to Saber Capital Partners LLC ("SCP") so long as (i) SCP remains a wholly-owned subsidiary of Saber Partners, LLC, (ii) SCP remains registered as a broker and dealer with the U.S. Securities and Exchange Commission, (iii) SCP remains a member in good standing of the NASD, and (iv) Joseph S. Fichera remains Chief Executive Officer of SCP, and any assignment by Saber Partners, LLC of any activity or activities of SCP pursuant to the preceding sentence shall not increase or otherwise affect the aggregate amount of compensation payable to Saber Partners, LLC and SCP, collectively, for any services performed under this Agreement, although Saber Partners and SCP shall to the extent practicable arrange to have compensation payable to SCP for any such activity or activities

performed by SCP paid directly to SCP. In the event of any breach of this Agreement by SCP following an assignment to SCP pursuant to this Section both Saber Partners, LLC and SCP shall be jointly and severally liable to the AGENCY for damages to the AGENCY resulting directly from that breach.

3. All provisions of this contract between the AGENCY and the FINANCIAL ADVISOR shall be governed by the laws of the State of Florida.

4. The FINANCIAL ADVISOR shall hold harmless, indemnify and defend the AGENCY and the State, and their directors, officers, employees, representatives and agents, against any claim, action, loss, damages, injury, liability, cost and expense of whatsoever kind or nature (including, but in no way limited to, attorney's fees and court costs) arising out of or incidental to any gross negligent act or omission of the FINANCIAL ADVISOR in the performance of any work under this contract except for claims or actions initiated or made by or on behalf of any IOU or which any IOU or shareholder or agent of a IOU may participate in.

5. The FINANCIAL ADVISOR shall comply with any and all applicable federal, state, county and local laws, and of all ordinances, rules, and regulations as the same exist and may be amended from time to time and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work.

6. In the performance of this contract, the FINANCIAL ADVISOR will be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venturer or associate of the AGENCY. The FINANCIAL ADVISOR shall be solely responsible for the means, methods,

techniques, sequences and procedures utilized by the FINANCIAL ADVISOR in the performance of the contract.

7. The FINANCIAL ADVISOR agrees to promptly notify the AGENCY's Project Manager of any circumstance that may create a real or perceived conflict of interest. FINANCIAL ADVISOR agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the AGENCY. Failure of the FINANCIAL ADVISOR to do so shall be grounds for termination of this contract for cause, pursuant to Article VI, section 2.

8. All contacts with the news media pertaining to this Agreement or the specific work performed under this Agreement shall be referred to the AGENCY's Director of Public Information, Kevin Bloom, telephone (850) 413-6482, fax (850) 413-6483, and e-mail kbloom@psc.state.fl.us.

ARTICLE VIII – COMPLETENESS OF THE CONTRACT; AMENDMENT; CONTRACT DOCUMENTS

1. Except as otherwise stated herein, the contract for services between the AGENCY and the FINANCIAL ADVISOR shall consist of this agreement document, the terms and conditions of the Request for Proposal RFP 05-01 (the "RFP"), and the proposal of the FINANCIAL ADVISOR (the "Proposal"). In the event of conflict between the terms and conditions of the various documents, the terms and conditions of this agreement document shall prevail over the terms and conditions of the RFP, and the terms and conditions of the RFP shall prevail over the provisions of the Proposal.

2. This agreement may be modified by the mutual agreement of each party; however, the contract shall not be modified or amended except in writing and executed with the same degree of formality with which this agreement is executed.

3. This contract contains the entire understanding of the parties and there are no other agreements or understandings, either written or oral.

IN WITNESS WHEREOF, the FINANCIAL ADVISOR and the Executive Director of the AGENCY have signed this contract as of the day and the year written below.

FLORIDA PUBLIC SERVICE COMMISSION

By: Mary A Bane
Mary Andrews Bane, Executive Director

Date 11/14/05

SABER PARTNERS, LLC

By: [signature]
Joseph S. Fichera
Chief Executive Officer

Date 11-15-05

SABER CAPITAL PARTNERS, LLC

By: [signature]
Joseph S. Fichera
Manager

Approved as to form and legality:

Christiana T. Moore
Christiana T. Moore, Associate General Counsel
Florida Public Service Commission