BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-EI

In the Matter of:

PETITION FOR ISSUANCE OF A STORM
RECOVERY FINANCING ORDER, BY FLORIDA
POWER & LIGHT COMPANY.

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VOLUME 1

Pages 1 through 37

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER J. TERRY DEASON
COMMISSIONER ISILIO ARRIGA
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Wednesday, April 19, 2006
TIME: Commenced at 9:30 a.m.
PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter
(850) 413-6732
PARTICIPATING:

WADE LITCHFIELD, ESQUIRE, NATALIE SMITH, ESQUIRE, and
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Florida 33408-0420, and JOHN T. BUTLER, ESQUIRE, 9250 West
Flagler Street, Miami, Florida 33102, appearing on behalf of
Florida Power & Light Company.

JOHN W. MCWHIRTER, JR., ESQUIRE, and TIMOTHY J.
PERRY, ESQUIRE, c/o McWhirter Law Firm, 400 North Tampa Street,
Suite 2450, Tampa, Florida 33602, appearing on behalf of
Florida Industrial Power Users Group.

PUBLIC COUNSEL HAROLD McLEAN, CHARLES BECK, ESQUIRE,
JOSEPH MCGLOTHLIN, ESQUIRE, AND PATTI CHRISTENSEN, ESQUIRE,
Office of Public Counsel, c/o The Florida Legislature, 111 W.
Madison Street, Room 812, Tallahassee, Florida 32399-1400,
appearing on behalf of the Citizens of the State of Florida.

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA,
III, ESQUIRE, Young Law Firm, 225 South Adams Street, Suite
200, Tallahassee, Florida, appearing on behalf of Florida
Retail Federation.

ATTORNEY GENERAL CHARLIE CRIST, CHRISTOPHER M. KISE,
SOLICITOR GENERAL, JACK SHREVE, SENIOR GENERAL COUNSEL, and
CECILIA BRADLEY, ESQUIRE, Office of the Attorney General, The
Capital, Tallahassee, Florida, appearing on behalf of the
Office of the Attorney General.

FLORIDA PUBLIC SERVICE COMMISSION
PARTICIPATING CONTINUED:

CAPTAIN DAMUND WILLIAMS, ESQUIRE, 130 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403, appearing on behalf of the Federal Executive Agencies.

MIKE B. TWOMEY, ESQUIRE, P.O. Box 5256, Tallahassee, Florida 32314-5256, appearing on behalf of AARP.

COCHRAN KEATING, ESQUIRE, JENNIFER BRUBAKER, ESQUIRE, ROSANNE GERVASI, ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf of the Florida Public Service Commission Staff.
# INDEX

OPENING STATEMENTS

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Litchfield</td>
<td>16</td>
</tr>
<tr>
<td>Attorney General Crist</td>
<td>24</td>
</tr>
<tr>
<td>Mr. Beck</td>
<td>26</td>
</tr>
<tr>
<td>Mr. McWhirter</td>
<td>32</td>
</tr>
</tbody>
</table>

Certificate of Reporter 37

Florida Public Service Commission
<table>
<thead>
<tr>
<th>NUMBER:</th>
<th>EXHIBITS</th>
<th>ID.</th>
<th>ADMTD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Comprehensive Exhibit List</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Staff Consolidated Exhibit List</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>5</td>
<td>Confidential Staff Consolidated Exhibit</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>6-136</td>
<td>Testimony Exhibits</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>137</td>
<td>Portions of Staff's Objections and responses to FPL 3rd Set of Interrogatories</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>138</td>
<td>Portions of Staff's Objections and responses to FPL's 6th Set of interrogatories</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>139</td>
<td>FPL admissions on revenue</td>
<td>15</td>
<td>15</td>
</tr>
</tbody>
</table>
CHAIRMAN EDGAR: Good morning. Welcome all to the Public Service Commission. Thank you for bearing with us while we took a few extra minutes to get some of our paper work in order. And I'm going to begin by asking our staff counsel to read the notice.

MR. KEATING: Pursuant to notice issued January 26th and April 3rd, 2006, this time and place have been set for a hearing in Docket Number 060038-E1, petition for issuance of a storm-recovery financing order by Florida Power and Light Company.

CHAIRMAN EDGAR: Thank you, Mr. Keating.

Next we'll take appearances, and we'll start at my left. I will ask you to go kind of slowly so I can make sure that I get everybody's name down.

MR. LITCHFIELD: Thank you.

Good morning, Chairman Edgar. My name is Wade Litchfield, I'm appearing on behalf of Florida Power and Light Company. I would also like to enter appearances for Natalie Futch Smith, Bryan S. Anderson, and John T. Butler, also of Florida Power and Light Company. And their addresses, as well as mine, are as reflected in the prehearing order in this matter.

CHAIRMAN EDGAR: Thank you.

MR. WILLIAMS: Captain Damund Williams appearing for
the Federal Executive Agencies.

MR. KISE: Good morning. Christopher Kise, Office of the Attorney General, on behalf of the Attorney General. Also, I would like to enter an appearance for Jack Shreve and Cecilia Bradley also from the Office of the Attorney General.

CHAIRMAN EDGAR: Thank you.

ATTORNEY GENERAL CRIST: Charlie Crist, the Attorney General of Florida.

MR. McWHIRTER: John McWhirter and Tim Perry representing the Florida Industrial Power Users Group. Our address is correctly stated in the pretrial order.

MR. TWOMEY: Madam Chair, Commissioners, good morning. Mike Twomey appearing on behalf of AARP and that portion of its approximately 2.8 million members served by Florida Power and Light Company.

CHAIRMAN EDGAR: Thank you.

MR. BECK: Good morning, Madam Chairman. I would like to make an appearance for Harold McLean, Public Counsel. My name is Charlie Beck. Also appearing today on behalf of the Citizens of Florida will be Joe McGlothlin and Patty Christensen.

CHAIRMAN EDGAR: Thank you. Are there others?

MR. WRIGHT: Madam Chairman, Commissioners, good morning. Robert Scheffel Wright, and also appearing will be John T. LaVia, III, on behalf of the Florida Retail Federation
and its several thousand members who are served by FPL.

CHAIRMAN EDGAR: Thank you.

MR. KEATING: Cochran Keating appearing on behalf the Commission. Jennifer Brubaker and Rosanne Gervasi also appearing on behalf of the Commission.

CHAIRMAN EDGAR: Thank you. Well, as you all know, we have a lot of material to cover. We have three full days to do it. We have a lot of witnesses, we have a lot of testimony. I expect we'll have a lot of exhibits. As you are also, I'm sure, well aware, we have a statutory time clock that we are operating under, which makes the opportunity to extend the hearing time quite limited. There is very little opportunity for us to schedule something to go beyond the three days. If we have to, we will certainly try to accommodate that.

But keeping in mind the time frame we have for the hearing and also the statutory time frame that we must meet, I do ask that all of the parties take that into account. We will cover all of the material that you want to, and the best way that we are able, but I would ask the parties to avoid duplicative cross-examination, and to try to limit their friendly cross and keep the cross-examination focused and concise so that we can get through all of the material that we need to in these next three days.

Staff, can you walk us through the preliminary matters.
MR. KEATING: Staff is aware of a few preliminary matters. First, both staff and FPL have provided other parties in the docket with notice of intent to request official recognition of some other state financing orders as well as other state statutes under which those financing orders were authorized.

I have not heard any objection. If there is no objection, staff would ask that those two requests be approved.

CHAIRMAN EDGAR: Is there any objection? Seeing none, show that request approved.

MR. KEATING: Second, I wanted to point out that there are some pending confidentiality matters. There are a handful of pending confidentiality requests in the docket. Most of those have been filed within the last few weeks and will be addressed in due time. To the extent that any of the confidential information is not used at the hearing and can be returned, staff does intend to return that information to the party.

And for purposes of this proceeding, any information that's subject to a pending request or claim of confidential treatment will still be handled as confidential.

CHAIRMAN EDGAR: Thank you.

MR. KEATING: In addition, FPL filed yesterday a motion for protective order to protect certain confidential information provided to Public Counsel and the Attorney
General's Office from disclosure during the course of this proceeding, I don't believe there is any objection to that motion, and I believe that's something that could be ruled on and perhaps approved at this point.

CHAIRMAN EDGAR: Are there any objections?

Then I find in favor of the motion.

MR. KEATING: Staff has handed out a Comprehensive Exhibit List that it prepared for the parties and Commissioners use in this proceeding. And we are handing out right now a revised version of that list. The only change is you will note the previous version that you may have been provided started with an Exhibit Number 1. We realized this morning that there were, I think, two exhibits that had already been marked and admitted into the record through the service hearings in this proceedings, so we are going to start this Comprehensive Exhibit List with Exhibit Number 3, and we would ask that the list itself be marked as Exhibit 3 as shown on the copy that was just handed out.

CHAIRMAN EDGAR: We will begin with the Comprehensive Exhibit List for the record as Exhibit 3.

(Exhibit 3 marked for identification and admitted into the record.)

MR. KEATING: Noted on that Comprehensive Exhibit List are the exhibits that accompanied parties prefiled testimony as well as a consolidated exhibit of discovery.
responses from FPL that was prepared by Staff. Due to time limitations, the consolidated exhibit had been numbered and copied prior to staff learning that not all of the items included in it could be stipulated.

Hence, what we have done, as you will see, and we have handed out a copy to all the parties, it's a large stack of documents, it has got a yellow page on the top. The yellow page indicates the portions of this document, this consolidated exhibit, that Staff understand had been stipulated by the parties. The green page underneath includes a list of all the documents that are included in this comprehensive exhibit. So what staff proposes to do is mark the consolidated exhibit, given the next number on the Comprehensive Exhibit List, as Exhibit 4.

And staff would ask that the stipulated portions, as identified on the yellow cover page, be moved into the record. The nonstipulated portions, staff will still be referring to those portions of this exhibit on cross-examination, and we would propose to move those into the record at the appropriate time.

CHAIRMAN EDGAR: Seeing no objections, show the request granted.

(Exhibit 4 marked for identification and admitted into the record.)

MR. KEATING: One more point on this Comprehensive
Exhibit List, or a couple more points. You notice on the
second page Staff has also prepared a consolidated exhibit that
consists of confidential discovery responses from FPL. We have
provided that to the Commissioners and the court reporter.

Staff would ask that that be marked as Exhibit 5 and moved into
the record, as staff understand there is no objection to moving
that into the record.

CHAIRMAN EDGAR: Show that as Exhibit 5.
(Exhibit 5 marked for identification and admitted
into the record.)

MR. KEATING: And, finally, on the copy that was just
handed out, staff has provided numbering for all the prefiled
exhibits on this list that were filed with testimony in this
docket. Starting with 6, and going through 136, it is staff's
understanding and the parties should probably jump in now if
we're incorrect, but it's staff's understanding that there was
no objection to moving any of these exhibits into the record
for purposes of streamlining the process. We would propose
that they be marked in the order that they are presented,
Number 6 through 136, and moved into the record at this time.

CHAIRMAN EDGAR: Seeing no objections, we will show
this as Exhibit 6 through 136.
(Exhibit 6 through 136 marked for identification and
admitted into the record.)

MR. KEATING: Staff is not aware of any other
preliminary matters, but I believe there are two parties that
have also proposed stipulated exhibits to be marked and moved
into the record.

CHAIRMAN EDGAR: Mr. Litchfield.

MR. LITCHFIELD: Thank you, Madam Chairman.

We have distributed this morning to all the parties
two documents, they are responses and also general objections
to interrogatories propounded by Florida Power and Light
Company. They have been agreed to be entered into the record
this morning. I would indicate that not all of the answers to
these two sets are attached, but simply those numbers to which
the parties have agreed to have moved into the record along
with the general objections. So I would ask that both of these
documents be marked as a composite exhibit sequentially and be
moved into the record.

CHAIRMAN EDGAR: Are there any objections?

Mr. McWhirter.

MR. McWHIRTER: Madam Chairman, FIPUG has an exhibit
which I guess at this juncture would be Exhibit 139 that we
would like to --

CHAIRMAN EDGAR: Mr. McWhirter, just a moment, I
don't want to get too far ahead of myself.

Are there any objections to Mr. Litchfield's request
for the exhibits he has put forth?

No. We will label those 137 and 138.
(Exhibits 137 and 138 marked for identification and admitted into the record.)

CHAIRMAN EDGAR: And, Mr. McWhirter, I'm now ready.

MR. McWHIRTER: These exhibits are three requests for admissions dealing with lost revenue that Florida Power and Light claims. They are admissions by Florida Power and Light on the subject.

CHAIRMAN EDGAR: So this would be Exhibit 139. Are there any objections?

MR. LITCHFIELD: None.

MR. KEATING: Just for clarity sake, for the record, FPL had handed out two documents, and I would just like to make clear, I guess, that Exhibit 137 will be the Staff objections and responses, portions of the Staff objections and responses to FPL's Third Set of Interrogatories. And 138 would be the portions of objections and responses to FPL's Sixth Set of Interrogatories to Staff.

CHAIRMAN EDGAR: Mr. Keating, thank you for that clarification.

And, I'm sorry, Mr. McWhirter, will you, for me, again give a description of the exhibit that you are proffering, which would be 139.

MR. McWHIRTER: Excuse me, Madam Chairman?

CHAIRMAN EDGAR: A description.

MR. McWHIRTER: A description?
CHAIRMAN EDGAR: A description.

MR. McWHIRTER: An admission with respect to lost revenues.

CHAIRMAN EDGAR: Any objection?

MR. LITCHFIELD: I will object to the characterization. I think the documents will speak for themselves, but I do not object to the records going into the record. Thank you.

CHAIRMAN EDGAR: Mr. McWhirter, how about an alternative title?

MR. McWHIRTER: FPL admissions on revenue.

CHAIRMAN EDGAR: Okay. Show that as Exhibit 139.

(Exhibit 139 marked for identification and admitted into the record.)

CHAIRMAN EDGAR: Any other preliminary matters?

MR. McWHIRTER: 139?

CHAIRMAN EDGAR: Yes, sir.

MR. McWHIRTER: Thank you.

CHAIRMAN EDGAR: Okay. We are at a point in time where we will begin here in just a moment with opening statements. Per the prehearing order, we will begin with counsel for Florida Power and Light who will have ten minutes to address the room. And then the intervenors will have 20 minutes collectively. I understand that they have divided that time up amongst themselves. And then our staff will have five
And, seeing no further matters, Mr. Litchfield, we are ready.

MR. LITCHFIELD: Thank you. Good morning, Chairman Edgar and Commissioners. My name is Wade Litchfield, appearing on behalf of Florida Power and Light Company. Last August all of the parties before you at the table today were here recommending your approval of a joint stipulation and settlement in FPL's base rate proceeding. In that case, FPL had requested an increase in its base rates of $430 million, including an increase of $100 million in the storm accrual intended to provide more protection against the need for future storm surcharges.

However, in reaching a settlement that left base rates unchanged for an extended period of time, a result that was enthusiastically endorsed by all the parties here today, it was agreed that FPL would suspend the existing accrual in base rates and that all storm restoration costs would be recovered through one of two methods; a surcharge, such as the one that is currently in place to recover the 2004 storm season costs, or pursuant to the newly enacted storm cost-recovery legislation via securitization.

Specifically, I would note that the parties agreed that FPL will be permitted to recover prudently incurred costs associated with events covered by Account Number 228.1, that's
the reserve account, and replenish Account Number 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 without the application of any form of earnings test or
measure.

Now, I would note, also, Paragraph 19 of the same
settlement agreement, 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.

All of the parties agreed to these provisions, and
the Commissioners unanimously approved that settlement,
expressing one concern, and that was that the company bring
back a proposal to replenish the reserve at the earliest
opportunity, and the company committed to do that.

And we all left here last August with an
understanding and with a plan. Unfortunately, due to an
equally devastating 2005 storm season, we now find ourselves
eight months later in a position to apply that plan.

Commissioners, the issues in this case over the next
three days that you will be called upon to decide fall
generally into one of four categories: The first relates to
policy, and the most important policy issue before you is the
one that given the last August settlement, we certainly did not
envision having to address again, and that is whether to accept

FLORIDA PUBLIC SERVICE COMMISSION
the recommendation of Mr. Jenkins on your Staff to force FPL to absorb up to 20 percent of the reasonable and prudently incurred costs to restore electric service. Mr. Jenkins' proposal would require you to ignore a fundamental element of the 2005 settlement agreement that I just referred to. You should not do so as a matter of policy and as a matter of law.

From the standpoint of public policy, if the Commission were to override a settlement agreement, it would be doing something that no Florida Public Service Commission in PPL's recollection, or in Mr. Jenkins' recollection, for that matter, has ever done in the history of Florida regulation. Such an action undoubtedly would have a future chilling effect on negotiated settlements long supported by this Commission and other regulatory bodies as being in the public interest.

Likewise, it would send a very dangerous signal to the investment community. Indeed, such an action would greatly increase regulatory risks as perceived by investors, thereby increasing Florida Power and Light Company's costs to raise capital and significantly raising costs to customers over the long-term. As a matters of law, there is nothing in the Florida Statutes, including the securitization legislation, that authorizes the sharing of prudently incurred costs. In fact, the legislature passed the securitization legislation to provide an additional mechanism for the recovery of prudently incurred storm costs.

FLORIDA PUBLIC SERVICE COMMISSION
And calling it sharing does not alter the fact that it would be nothing more than a disallowance of prudently incurred costs, a severe departure from longstanding principles of utility law and regulation in Florida. Again, it is important to remember that this issue was raised last year and rejected by this Commission. It was inappropriate and bad policy then, and it is inappropriate and bad policy now.

The second general category of issues relates to accounting, and specifically what should be charged to the reserve. You will hear the intervenors support the concept of a so-called incremental approach, yet they are very selective in their use of the term incremental. For example, they would deny FPL the recovery of unbudgeted and incremental costs spent on public safety messages during the restoration effort. They would deny FPL recovery of unbudgeted and incremental costs of backfill and catch-up work, even though in last year's hearings Public Counsel's own witness acknowledged that such costs were recoverable if they were incurred to facilitate restoration activities. And they would deny FPL recovery of unbudgeted and incremental costs incurred in meeting certain obligations to the very utilities that supported us through the storms.

You will learn also that the intervenors have some errors in the mathematical application of their proposed approach. For example, their witness proposes disallowing regular payroll expenses, yet makes no adjustment for the fact
that a portion of those expenses has already been eliminated from FPL's request because they will likely be recovered from insurance proceeds. Similarly, their witness proposes disallowing fleet vehicle costs, yet, again, makes no adjustment for the fact that a portion of these expenses has already been eliminated from FPL's request because they are included in the capital adjustment.

Thus, intervenors profess concern about so-called double-dipping, yet they apply that exact approach when it comes to proposing disallowances. It is important that we all understand for future events what the accounting ground rules are going to be going forward. We ask that you decide these accounting issues consistently within the overall accounting and ratemaking framework and with a mind to the policy implications and the incentives or disincentives that they will establish. Mr. Davis and Mr. Gower address these issues in detail in their testimony.

The third set of issues relates to prudence. During last year's proceedings prudence was not questioned. In fact, the company's performance was applauded by many of the same parties who are here today. Significantly, in this case it is uncontroverted by any testimony filed in this docket that the company's performance was just as good or better than it was in 2004. It simply defies logic now, only a year later, to say that the company has faulty maintenance practices. Yet you
will hear allegations that FPL did not adequately maintain its transmission and distribution system. But if there were any merit whatsoever to such a claim, the evidence would have been borne out long before now through lower reliability indicators in FPL's day-to-day operations.

The fact is that the most relevant overall reliability indicator for FPL customers is and has been for many years in the top quartile of the utility industry at FPL. An incredible accomplishment when you consider that we provide service within an area that has the greatest incidence of lightning strikes anywhere in the country, and an area that experiences exceptionally rapid vegetation growth. A utility simply cannot over a multi-year period consistently produce top quartile results if it operates in a slipshod fashion as has been alleged. It just doesn't happen. And it has not happened in the case of FPL.

The fact is that only a tiny fraction, less than one percent, of the company's poles came down due to the indiscriminate stress of hurricane-force winds during 2005. About the same percentage that came down during last year's storms, and a lower percentage than has come down on other utility systems in hurricanes of equivalent intensity. And the poles that fell were of all types and ages, including brand new and even concrete poles. Those figures are entirely consistent with what one would expect on a system such as FPL's where pole
construction standards are among the highest in the industry.

This Commission will consider in another proceeding the extent to which those standards should be further increased taking into account the prospect of more active storm seasons in the future. And as a matter of public policy, you will decide whether and at what cost we should attempt to lower the hurricane failure rate for poles. Perhaps to three-quarters of one percent, or perhaps to one-half of one percent, but those policy decisions are yet to be made.

What is important today is that a well-performing system in nonhurricane conditions performed as expected during the 2005 storm season, consistent with its design standards. In weighing what parties in this docket have to say on this and other matters, we would ask that you keep in mind that none of the parties other than the Office of Public Counsel has conducted any independent discovery or filed any testimony on the subject of prudence in this case.

And even the Office of Public Counsel has only one witness on the subject of prudence, and that is Mr. Byerley. And the weight of his testimony, we would submit, is paper thin. His conclusions are predicated on what he calls a windshield survey, driving through parts of Palm Beach County, on faulty assumptions relative to the number of poles and the amount of conductor use in his analysis, and on fundamental misapprehensions with respect to FPL's own forensic analysis.
The fact that poles fail under the stress of hurricane impact is not an indication that they were improperly maintained, despite the rhetoric to the contrary. As reflected by the non-systematic damage to infrastructure throughout the state, hurricanes are indiscriminate destroyers. A finding of imprudence is a drastic remedy in regulation. In this regard, as you carefully review and contrast the testimony of Mr. Byerley to those of Mr. Brown, Ms. Jaindl, and Ms. Williams, you will observe that Mr. Byerley's criticism is unfounded.

Finally, the fourth set of issues that you will be called upon to address relates to the mechanics of securitization itself. There are questions for you to resolve on the specifics of the process, but that remains much to do after the issuance of the financing order. FPL welcomes and encourages the direct involvement of Commissioners in overseeing the securitization process.

As Mr. Dewhurst's testimony explains, the Commission has a decision to make as to the nature of the involvement it wishes to have in the issuance of the securities, and where final decision-making responsibility should be. FPL pledges to work cooperatively within whatever framework the Commission wishes to institute. However, we would ask, at a minimum, that the Commission recognize that FPL has ultimate legal
responsibility for the offering and marketing documents and, therefore, should be allowed to make the final call on precisely what it can or should say in those documents.

And, secondly, if the Commission decides to take an active role in directing and overseeing the bond issuance process, that the Commission maintain its own decision-making authority and not leave that authority to be exercised through others.

That concludes FPL's opening remarks, Chairman Edgar.

I thank you, Commissioners.

CHAIRMAN EDGAR: Thank you, Mr. Litchfield.

As noted ten minutes ago, the Intervenors have twenty minutes collectively.

General, are you going start us off?

ATTORNEY GENERAL CRIST: Yes, ma'am.

Thank you, Madam Chair, and members of the Commission. I appreciate the opportunity to have the occasion to represent the people of the state of Florida.

I'm pleased to recognize the outstanding work of two individuals who fight for the ratepayers of our state every day: Public Counsel Harold McLean and Deputy Public Counsel Charlie Beck. I also wanted to recognize some people in the Office of Attorney General: Jack Shreve, Chris Kise and Cecilia Bradley who do extraordinary work for our office. I also commend those who have intervened in order to represent
their constituents: Mike Twomey of AARP, John McWhirter and Tim Perry of the Florida Industrial Power Users Group, Shef Wright and the Florida Retail Federation, Lieutenant Colonel White and Captain Williams representing the federal government. I think somebody is turning down my microphone. Maybe not. It's a power issue, isn't it?

This coalition represents a diverse section of consumers in Florida, both young people and seniors along with business and private consumers. Each are required to pay their bills and pay higher costs when storms reek havoc over their businesses and their homes. When storms hit a utility such as Florida Power and Light, the law allows them to recover some of their losses. We are here today because Florida Power and Light seeks one and one-half billion dollars from those who are paying their own storm damage costs. These funds are sought for storm recovery and to establish a reserve fund. It is an outrageous amount of money.

The hurricane costs sought by utilities must be kept to a minimum. There are four basic reasons why at least $615 million total should be cut from the request: Failing to undertake necessary preventative maintenance inspections. Two, failing to provide proper maintenance and replacement of transmission lines and poles. Three, failing to maintain trees which led to downed poles and damaged lines. And, fourth, double-counting; including costs and expenses that have already
been paid in their base rates.

A legendary basketball coach at UCLA, John Wooden, had an important motto, "Those who fail to prepare prepare to fail." Coach Wooden has described the approach taken by FP&L. FP&L has requested a $650 million reserve. This must be cut drastically. Florida ratepayers are not only paying for storm damage, they are also paying extremely high fuel bills for electricity and the high cost of fuel in their daily lives.

You should cut at least $450 million from FP&L's requested reserve.

We may not have hurricanes which require a large reserve. If we have storm damage that exceeds reserves, we can deal with those when necessary. Right now ratepayers simply cannot afford to provide a reserve of this size.

There is one final question: To whom do the ratepayers turn to recover their costs? It is, of course, you, the Public Service Commissioners. You are empowered to look at these presentations, and even to look beyond to determine the additional burden placed on the citizens of Florida and to fight for and to protect them.

Thank you very much for giving me the opportunity to speak, and please excuse me in my necessity to depart early.

Thank you very much, Madam Chair.

CHAIRMAN EDGAR: Thank you, General.

Mr. Beck.
MR. BECK: Thank you, Madam Chair, and thank you, Mr. Attorney General.

Commissioners, many of the costs FPL seeks to securitize in this case are not reasonable and are not prudent, and the Commission is prohibited by the securitization statute from allowing FPL to finance any such costs. Our office will sponsor three witnesses addressing those areas where FPL's costs are unreasonable and not prudent.

The first area that we addressed involves FPL's inadequate maintenance of their plant. Our witness Mr. James Byerley will address that area. Mr. Byerley is a registered professional engineer, and is past manager of transmission engineering and construction for the Tennessee Valley Authority. He is well qualified to testify about the adequacy or lack of adequacy of FPL's maintenance.

One of the big failures during the 2005 hurricanes was the cascading toppling of 28 transmission towers. The evidence will show -- and this is developed through discovery and extensive analysis, and not a windshield tour as described by FPL -- the evidence will show that FPL knew as early as 1998 about loose and missing braces on these towers and was aware that this problem could pose serious risks of failure in high wind situations.

Had FPL pinged the bolt threads as internal documents of FPL suggested at the time, or had FPL placed fasteners on
their cross-brace bolts as its structural engineer recommended after the collapse, the towers would not have fallen during Hurricane Wilma.

Mr. Byerley will also tell you how FPL's distribution pole inspection program has been minimal at best and virtually nonexistent at times. FPL had initiated a distribution wood pole inspection program in the 1980s, which it discontinued in 1991 to save money. When it restarted inspections in the late 1990s, some FPL personnel recommended that FPL implement a system-wide pole inspection maintenance program designed to inspect all of their poles over a period of four, seven, or ten years, much like the PSC recently ordered the company to do. Instead, FPL implemented only a very small inspection program limited to a relatively small number of inspections in only two distinct geographic regions.

The past distribution pole inspection practices have been insufficient to identify and replace deteriorated poles with the result that many of the poles that failed during Wilma did so not because of high winds, but because of their deteriorated condition.

Inadequate vegetation management is responsible for 12 percent of the pole failures. Since FPL has concluded that it is most cost-effective for its purposes to replace tree-damaged poles than prevent the damage, FPL is not entitled to recover their preventable costs, nor are they entitled to

FLORIDA PUBLIC SERVICE COMMISSION
recover the repair costs of the conductors associated with those poles. And this will be covered by Mr. Byerley's testimony, as well.

The second broad area where the amount of storm damage is not reasonable and not prudent concerns the way FPL attributes normal expenses already included in base rates as hurricane expenses as well. This area is addressed by two of our witnesses, CPAs Hugh Larkin and Donna DeRonne. The expenses are imprudent from an accounting perspective because FPL's proposal would double-count expenses.

We propose in our testimony, like the Commission ordered in 2004, to only allow FPL incremental expenses related to the hurricanes. Mr. Larkin will cover the overall policy, and Ms. DeRonne will address specific adjustments consistent with that policy. While our proposals regarding double-counting of expenses are consistent with the Commission's order covering the 2004 hurricane expenses, one area where our proposals differ from the PSC's 2004 order concerns lost revenues and uncollectibles.

Florida Power and Light's case before you today attempts to recover lost revenues in a variety of ways. For example, you will hear them say again and again that they didn't recover their normal level of expenses embedded in base rates because they didn't get expected revenues during the hurricanes. Not only should you not surcharge customers to pay
for lost revenues as a matter of principle, but in this case you will see there were excess revenues during the hurricane season. There are no lost revenues.

As a matter of principle, it comes down to what business risk is going to be FPL's responsibility and whether this Commission will force customers to pay for electricity they didn't use through a surcharge. Is FPL compensated for business risk? You bet they are. $100 million per year for each basis point in their return on equity. There's hundreds of millions of dollars that FPL receives to compensate them for their business risk, and those dollars are just as green as any other dollars received by FPL.

Did they lose some revenues on account of the hurricanes? Yes, because of the time it took to restore power. But other weather events during the year affected FPL's revenues in a positive way. It was a very hot summer last year, and the hot weather led to FPL exceeding expected revenues by a large margin during the summer. If you look at the last half of 2005 during which all the hurricane activity took place, FPL was still ahead on revenues when comparing actuals to projections, even taking the hurricane outages into account.

You should not make customers pay for so-called lost revenues whether done directly or through one of the back-door methods proposed by FPL when the overall effect on FPL from

FLORIDA PUBLIC SERVICE COMMISSION
weather phenomena during the second half of 2005 is positive. If there is anything in this case, there are found revenues not lost revenues.

There are also issues remaining from 2004, the biggest of which is whether you will make FPL abide by your order which required FPL to stop charging 2004 storm costs to the storm reserve by July 31st, 2005. When July 31st came and FPL had not spent the maximum amount allowed by your order, FPL simply made accruals for every possible dollar allowed, whether or not they spent it and whether or not they knew what they were going to spend it on. The Commission gave FPL a cut-off date for the 2004 hurricane costs and it should be enforced.

Lastly, Commissioners, we ask that you remember that the hurricanes imposed great hardships on customers. Besides the incredible disruptions of people's lives that occurred while they were without electricity, sometimes for weeks at a time, some people experienced life-threatening medical emergencies because of the lack of power. Some people were trapped in their apartments for weeks without electricity because their elevator wouldn't work without power.

At the service hearings you held in Fort Myers, Fort Lauderdale, West Palm Beach, and Miami, you heard about the extreme financial hardship that high electric prices placed on the most needy among us. As you decide this case, we ask you to please keep these things in mind, and don't make things
any worse for the customers of Florida by approving charges
which are higher than necessary.

Thank you.

CHAIRMAN EDGAR: Mr. McWhirter.

MR. McWHIRTER: Madam Chairman, it's hard to follow
those two eloquent presentations, and I will be brief.

My clients admonished me to recognize that a lot of
times we sit around and pick on Florida Power and Light and
other utilities for the things they don't do, and infrequently
do we compliment them on the things they do. And I want to
compliment Florida Power and Light people here, but especially
the workers who worked hard to get power back to the customers
as fast as they could. And we appreciate that, and we hope
they will continue that good work.

But having said that, we don't want to turn a
hurricane into a windfall for investors to be deployed into
other activities. The first thing that I think we need to
think about is the real magnitude of this case. Florida Power
and Light wants to issue bonds of about a billion dollars, but
they're not asking to collect the billion dollars from
customers, they're not even asking to collect 1.5 billion as
The General said.

When you take into consideration not only the bond
issue, but the interest on the bond issue over the 12-year
period, plus the servicing costs, plus the income tax that is
going to be charged to customers, you are going to find that Florida Power and Light is really asking to collect $2,085,000,000 from customers over the next 12 years. This is very similar to a very large base rate case, which we haven't seen in a long, long time of about $175 million a year on current customers. That's a big rate increase.

The second thing I want to talk about is the issue of due process. Typically, a utility case, if they came in and asked for 175 million in a base rate increase, the Commission would have time to consider it for more than eight months before it had to issue an order. In this case, the time is constricted very substantially by the order -- by the legislation that controls you. As a consequence, to get into the detail, the records which are exclusively in the possession of the utility company and many of which are confidential, makes it an almost impossible task to fully audit the true circumstances of the case. So we rely heavily on your Staff. And my clients are relying heavily on the good work that has been performed by the Public Counsel.

So what we are doing is trying to focus on some specific regulatory issues that we think should be given consideration. Our main concern is the regulatory aspect of incremental costs. Stated another way by Mr. Beck just a minute ago, it is double recovery. If customers have already paid for a lineman's salary for the day to go out and work on
the line, they ought to get credit for the money they have
already paid, and all of that shouldn't go into storm costs.

FPL tried in their last rate case to put it all into
storm costs under an accounting procedure that they adopted
back in 1993, and they said that the Commission approved, and
the Commission didn't go along with that. What the Commission
did say is, well, let's look at the revenues you did collect.
And if you didn't collect your full revenues, then you haven't
recovered what you were entitled to get through base rates, so
we will give you lost revenues.

In this case, as Mr. Beck has pointed out, the
utility has plugged $7 million in lost revenues into their
request for collection, and that's money they didn't collect
from people who weren't getting service. But the truth is that
all the people that were still getting service were sitting
home watching TV to see what was going to happen to them next,
and if you were there you recall it very vividly, and their
bills went up. And, as a consequence, during the period of the
storm, Florida Power and Light, and this is what Exhibit 139
shows you, collected $25 million more than they thought they
were going to collect. So the idea of lost revenues is silly.

The next aspect that I want to talk about is income
tax. And I'm not an accountant, and I probably screw things up
more trying to explain it to you than I help you with, but it
is pretty clear that what happens in the regulatory process is

FLORIDA PUBLIC SERVICE COMMISSION
that if a utility has an expense and it collects money from customers to cover that expense, then those revenues are tax deductible to the utility and there is no income tax. But if the utility is collecting money for its earnings, the return that you have allowed it, which is 12.75, I believe, or 11.75 -- they're showing me the watch, I'm going to quickly hurry up -- in any event, in order to get that done, you mark up their earnings by 62 percent.

Now what we want to be sure, since storm damage are expenses, you want to be sure that you match the expense to the revenue collected so that there is no income tax impact. But in this case, FPL has an original issue discount methodology that we will get into a little bit further. And the question is whether that works.

The final regulatory issue that FIPUG is interested in is cost allocation. And that has to do with the fact that the customers are divided into classes, and when you assign costs, you should charge each customer class with the impact their class has caused the company, and we'll talk about that later in the briefing.

And the post final thing is revenue sharing. And Mr. Litchfield has told you that you are bound by the stipulation. When we entered into a stipulation in a base rate case, that stipulation has to do with base rates. From the customer's side, we're trying to keep the rates level. In our
stipulation, FPL said it would not increase rates. It did give itself an out, however, and it said if we have a storm we want to collect that money. And in our stipulation we agreed to that, that they collect the prudent money but they couldn't double collect. But we did not intend to bind the Commission in the event of extraordinary circumstances. And the Commission, if the utility is earning a 50 percent return, no one would suggest to you that you can't come in and take some preventative action for customers, even during the period of time. So this case has to do with revenue sharing, and you are not restricted in any fashion, although the parties are restricted.

And I'm going to wind up so the other people will quit bumping on my back.

(Transcript continues in sequence with Volume 2.)
STATE OF FLORIDA  
COUNTY OF LEON  

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 19th day of April, 2006.

_____________________________________
JANE FAUROT, RPR
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