

ORIGINAL

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 Subject: Docket No. 060038-EI  
 Attachments: FIPUG's Posthearing Brief and Statement of Issues and Positions - FINAL - 4-28-06.doc

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2. The filing is to be made in Docket 060038-EI, In re: FPL's petition for issuance of a storm recovery financing order;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 19; and
5. The attached document is The Florida Industrial Power Users Group's Posthearing Brief and Statement of Issues and Positions.

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's  
Petition for Issuance of a Storm Recovery  
Financing Order

Docket No: 060038-EI  
Filed: April 28, 2006

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS<sup>1</sup>**

Pursuant to Rule 28-106.215, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG) hereby files its Post-Hearing Brief and Statement of Issues and Positions.

**INTRODUCTION**

The time constraints imposed by law on this proceeding do not afford sufficient time to enable either the Commission or intervenors to adequately explore the factual details of FPL's monumental storm damage claim. By way of comparison, a much smaller base rate case would be prosecuted over an eight-month period after extensive minimum filing requirements had been met by the utility. Much of the information in FPL's storm case is estimated. In spite of limited time constraints and lack of actual cost information, the Office of Public Counsel (OPC) has discovered and presented evidence detailing several important revenue issues.

In this brief FIPUG agrees with and incorporates by reference the positions of the OPC on revenue issues. FIPUG then focuses on specific recommendations for regulatory policy and statutory construction to protect the interests of consumers. While securitization had initial eye appeal, the evidence developed at the hearing militates against this approach. FIPUG concludes that customers can save over \$1.2 billion if the Commission will accept the OPC's relatively modest revenue reductions, reduce the initial storm reserve to a reasonable level and shorten the recovery period to 3 years.

<sup>1</sup> Throughout this brief the following abbreviations are used: "FPL" or "the Company" means Florida Power & Light Company; "FIPUG" "OPC" refers to the Office of Public Counsel; "AARP" refers to AARP; "FRF" refers to the Florida Retail Federation; "FEA" refers to the Federal Executive Agencies. References to the a page and line

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## SUMMARY OF POST-HEARING BRIEF

FPL's proposition that an extended payout period at higher interest rates is in consumers' best interest is flawed. The petition seeks authority to sell \$1.049 billion in storm bonds. The proceeds will be allocated to immediately fund a \$650 million storm reserve. The balance will be used to pay FPL's 2004/2005 storm damage claim which is \$399 million after credit for tax deductions is applied.<sup>2</sup>

Customers will be charged to pay off the bonds. The amount they will pay includes income taxes, state revenue taxes, local revenue taxes, increased interest cost, financing costs and servicing fees. When these additional amounts are applied, we find that consumers will be charged over \$2.4 billion to satisfy the bonds. No consideration has been given to the impact of price elasticity and conservation except FPL's statement that for a successful bond issue, customers must bear all risks.

Having heard the evidence and evaluated costs FIPUG changes its initial position and respectfully suggests the public interest mandates a reduced storm reserve with a short payback.

FIPUG recommends the following regulatory policies:

1. Reaffirm the incremental cost approach: Eliminating double counting saves consumers \$32 million. Other OPC adjustments bring the total storm claim reduction recommended by intervenors to \$114 million.
2. Reject FPL's lost revenue demand: Saves customers \$7 million of the \$114 million OPC witnesses calculate.
3. Reduce interest cost: Saves Consumers \$311 million.
4. Look at state and local tax cost: Saves customers \$271 million by limiting new taxes on storm damage claim to \$132 million
5. Reduce the proposed storm damage reserve: Saves customers \$500 million by letting them share in the good credit rating they already provide for FPL.

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number in the transcript are denoted as (T 123, L 45) and exhibits are referenced as (E 678).

<sup>2</sup> T 484.

6. Other regulatory policies FIPUG recommends:
- a. Increase the storm reserve by any amount FPL collects from other utilities for storm assistance,
  - b. Modify AFUDC to recognize the cost free capital element of storm bonds,
  - c. Match storm expenses to storm surcharge to avoid income tax,
  - d. Follow standard cost of service principles and allocate storm costs to the portions of the system that suffered storm damage and charge customers accordingly consistent with the methodology utilized in Docket No. 041291-EI.
  - e. Eliminate denial of due process and unconstitutional delegation of legislative power.
  - f. Prohibit investing storm reserve in activities of related companies.

#### **POST-HEARING BRIEF**

**I. Reaffirm The Incremental Cost Approach: The Incremental Cost Approach Advocated By OPC Is Fair To Ratepayers And FPL, And Should Be Approved By The Commission**

FIPUG supports the incremental accounting approach for storm costs as discussed in the testimony of OPC witnesses Larkin and DeRonne. In effect, the storm reserve is “customer supplied insurance”<sup>3</sup> that provides for the repair of the utilities’s system in the event of a storm, with the customer playing the part of the insurer. As with all insurance policies, there is an allocation of risk between the insurer and insured. However, in this case, FPL’s actual restoration cost methodology seeks to allocate 100% of the risk to its customers.<sup>4</sup> Only the incremental cost approach presented by OPC’s witnesses presents a fair allocation of the risks between the customers and FPL.

Under the incremental approach, FPL’s expenditures that are covered by its normal base rates are removed from the storm reserve to prevent customers from paying for the same costs

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<sup>3</sup> T 890, L 15.

<sup>4</sup> T 891, L2-3.

twice (i.e. double counting).<sup>5</sup> This approach is entirely consistent with the Commission's prior orders,<sup>6</sup> and with the practice of other utilities. Gulf Power Company previously agreed to a settlement of its 2004 storm costs whereby it employed the incremental cost approach.<sup>7</sup> Moreover, in Gulf Power's pending securitization in Docket No. 060154-EI it proposed using the incremental approach on its own accord.<sup>8</sup> FPL's protestations that the incremental approach is improper are nothing more than red herrings to be disregarded by the Commission.<sup>9</sup>

**II. Reject FPL's Lost Revenue Demand: FPL's Actual Revenues Exceeded Forecasts, Hence FPL Did Not Suffer Lost Revenues**

The securitization statute provides for the possibility of the Commission, at its discretion, making an adjustment for lost revenues.<sup>10</sup> However, the Commission should not grant such an adjustment for the reasons set forth below.

The securitization statute contains neither a definition of lost revenues nor a methodology for calculating lost revenues.<sup>11</sup> FPL calculates lost revenues by estimating what the customers who had no service would have consumed. FIPUG suggests that lost revenue be determined by comparing FPL's estimated sales forecasted in the fuel docket to the actual sales during the storm period. FIPUG's method is the preferred approach because it considers sales to all retail customers, including those affected by the storm.<sup>12</sup>

Essentially, FPL's calculation is that had there been no hurricanes it would have had \$51.8 million more revenues, therefore it suffered lost revenue.<sup>13</sup> FPL concedes that it does not seek to be made whole for the \$51.8 million, but if the Commission adopts the incremental

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<sup>5</sup> T 932, L9-14; 948, L 1-13.

<sup>6</sup> T 948, L 1-13.

<sup>7</sup> E 170.

<sup>8</sup> T 916, L12 – 917, L6.

<sup>9</sup> T 898, L15 – 900, L3; 901, L11 – 903, L 19.

<sup>10</sup> Section 366.8260(1)(n), Florida Statutes (2005)

<sup>11</sup> *Id.*

approach (which it should) then FPL believes the Commission should make an adjustment to the extent that base rate recovery of normal O&M expenses did not occur as a result of lost revenues.<sup>14</sup> OPC and FIPUG have undertaken a study of whether base rate recovery of normal O&M expenses occurred during the storm period by comparing FPL's own projected sales to its actual sales during the storm period.<sup>15</sup> By its own admission, during the period July – November 2005 when FPL's customers experienced outages, FPL also experienced an increase in sales over its projections of 713,450,821 kWh.<sup>16</sup> This difference meant that FPL collected \$25,113,468.90 more in base rate revenues than it had anticipated it would receive during the same period.<sup>17</sup>

Dr. Leo Green, in his rebuttal testimony, asserts that OPC's calculation is improper because it does not take into consideration that the effect of billed sales on the analysis. Assuming for the sake of argument that Dr. Green is correct (which FIPUG does not concede), Dr. Green's own analysis shows that FPL's sales were net positive for the storm period and thus FPL did not experience lost revenues.<sup>18</sup> If anything, FPL experienced found revenues experienced as a result of the storms. FIPUG is not opposed to allowing FPL to keep the windfall revenue of \$25 million as a result of the storm season, but no adjustments should be made for lost revenues in implementing the incremental approach.

### **III. Reduce Interest Cost By Shortening The Collection Period**

Interest on short-term commercial paper is less than interest on long-term bonds. Using an alternative three-year collection period at commercial paper rates rather than 12-year bonds will save consumers \$311 million.

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<sup>12</sup> T 738, L 20-24

<sup>13</sup> T 739, L 18-21

<sup>14</sup> E 139, FPL's Response to FIPUG's Request for Admission No. 1

<sup>15</sup> E 84; E139, FPL's Response to FIPUG's Request for Admission Nos. 1 &2

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> T 740, L 6-10; E 108.

To understand the calculations in this brief it is first necessary to understand the inconsistency in FPL's calculations. FPL seeks \$1.049 billion to compensate for the storm loss and \$650 million to fully fund a storm reserve for future storm protection. It claims the same total amount of \$1.7 billion for each method. Under the securitization approach however it gives customers an upfront benefit for the tax deduction FPL may have already taken.<sup>19</sup> It plans to collect \$2.085 billion from customers under the securitization approach in this proceeding to repay the bonds.

When FPL calculates the alternative method it doesn't deduct the taxes up front even though it may have already taken the deduction. In order to make a fair comparison in this brief, FIPUG calculates the savings by reducing the storm cost by the tax deduction at the outset in the same manner FPL does for its securitization approach. FIPUG also reduces the storm reserve to \$200 million for reasons that are explained below. Conforming FPL's alternative approach to its securitization approach and then reducing the storm reserve results in significant savings. The savings will be even greater when the OPC revenue deductions are factored in.

Mr. Dewhurst's exhibit MPD-1 (E 6) uses an estimated bond interest rate of 5.06%, and anticipated that total interest costs charged customers would amount to \$373 million over the term of the bonds. At the final hearing, Mr. Dewhurst testified that the interest rates are trending upwards and have increased 40 basis points since the time FPL filed its Petition.<sup>20</sup> FIPUG has used the conservative numbers presented by FPL of 5.06% for long-term bonds and 4.125% for

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<sup>19</sup> T 481, Mr. Davis:

"And in Line 12, what we are specifically asking for is \$1,690,160,000 of costs to be securitized. However, the amount that will actually be issued in bonds will only be one billion fifty, which is the 1-38 billion shown on Line 22, plus the issuance costs of about \$11 million. So what is happening there is that we are providing the benefit to the customer of having deducted the storm losses and received a current cash benefit for those losses."

T 484, Mr. Davis:

Q. All right. Now do I understand from what you before that you really don't need \$1.7 billion to pay for your out of pocket storm damages because your income tax savings paid for part of that, so you really need less than \$1.7 billion? A. I believe that that is a fair characterization of what you see on Lines 5 through 9.

<sup>20</sup> T 90, L 9-19.

commercial paper.

Under securitization, customers pay at least \$373 million in interest, under the alternative approach interest is reduced to \$64 million, a savings of \$311 million. The savings will be greater if interest rates go up.

#### **IV. Reduce Taxes On Customers By Shortening The Collection Period**

Florida utilities are willing cash cows for taxing authorities. They get the clout for being a large taxpayer, but all the taxes are passed through to customers. None of FPL's presentations takes into account the full magnitude of state and local taxes and franchise fees that are added to customers' bills.

Utility profit included base rates is subject to 38.575% in income taxes whether they are paid or avoided. Because the utility must pay income tax on the money collected from customers to pay taxes. So the customer's bill increased more than 38.575%. When the gross up is complete utility earnings are grossed up over 61% to provide the utility with its authorized after tax profit. "Profit" includes any revenue that is not matched with a current offsetting tax deductible expense.

Ad valorem taxes have soared in recent years. These property taxes are about 3% of the market value of FPL's property. They are collected as a special surcharge that is hidden in automatic adjustments to base rates. Fortunately this tax, unlike others, should not go up when the surcharge is set. Base rates are also automatically revised to include a .0125% regulatory assessment fee. Income tax, property tax and the regulatory assessment fee are not shown on the customer's bill, but the customer indirectly pays these fees and taxes on utility revenue and property.

FPL acts as a tax collector for other taxes and fees. These charges are added and are shown on customers' utility bills, but only one is mentioned when FPL sets out the impact of its

rate increases on customers. The tax mentioned is the 2.564% gross receipts tax.<sup>21</sup>

The other taxes which are not accounted for when FPL calculates customer impact are:

1. the municipal and charter county utility tax that can be as high as 10% on all of the utility bill except a portion of the fuel charge;
2. the municipal franchise fee ranges from 4 to 6% depending on negotiations with cities; and
3. a 7+0% sales tax is collected from most business customers. Residential customers are exempt from sales tax.

The disclosed taxes amount to about 15% of the bill for residential customers and 25% for commercial customers. General Service business customers constitute 39% of FPL's sales. Residential customers account for 54% of FPL's sales. For the purpose of calculating the true impact on customers FIPUG has used a blended tax rate of 17.4 %.

When 17.4% for other taxes is added to the surcharge FPL seeks to impose the total amount to be collected from customers will increase by \$363 million to \$2.4 billion.

Shortening the collection period will still result in a tax boon to government, but it will save customers about \$230 million.

**V. Reduce The Proposed Storm Damage Reserve: It Is In The Best Interest Of FPL's Customers To Minimize The Amount Of FPL's Storm Reserve**

While it is not entirely clear that FPL needs a positive storm reserve at all,<sup>22</sup> if the Commission decides to grant FPL such a reserve then, as discussed in the testimony of OPC/AARP witness Stephen A. Stewart, an appropriate level for FPL's storm reserve is \$150 million.<sup>23</sup> In fact, a storm reserve level of only \$60 million would have been sufficient to handle 13 of the last 16 storm seasons.<sup>24</sup> By comparison, FPL requests a storm reserve level almost 11 times that amount, yet its request would add only a small additional measure of security: FPL's proposed \$650 million storm reserve would have been sufficient to handle 14 of the last 16 storm

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<sup>21</sup> E 63.

<sup>22</sup> T 1053, L 19-20.

<sup>23</sup> T 1049, L 16-21; E 87.

seasons.<sup>25</sup> Given that a \$60 million reserve would have been sufficient to cover most but not all of the last 16 storm seasons, it seems conservative that a reserve 2 ½ times that amount would be sufficient to satisfy the needs of FPL and its customers.

The cost of FPL's request is significant to customers, and militates against granting FPL's request. If securitization is approved, customers would be sidled with a negative interest rate carrying cost of 1-2%<sup>26</sup>; that is, the reserve itself would earn only 4% interest<sup>27</sup> while the ratepayers would pay 5-6% interest on the storm charge. In addition, the larger the amount securitized the greater the cost to ratepayers in the form of issuance fees, underwriting fees, legal fees, other fees and taxes.<sup>28</sup> Assuming securitization is approved, if the size of the reserve is reduced from \$650 million to \$150 million, ratepayers will save in excess of \$90 million in interest alone.

Yet another factor that supports a smaller reserve is the favorable regulatory environment that the Commission and the Legislature has created. If a utility incurs significant storm costs, there is precedent for that utility to apply for and receive an interim surcharge to begin recouping its costs pending a full evidentiary hearing.<sup>29</sup> Further, the Commission has demonstrated its willingness to allow the recovery of prudently incurred storm costs via a surcharge over two to three years.<sup>30</sup> In addition, the Legislature has provided for the possibility of recovery via

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> T 1782, L 10-15.

<sup>27</sup> T1781, L 9-15.

<sup>28</sup> T 1765, L 17-19; T 1053, L 5-16

<sup>29</sup> Order No. PSC-05-0187-PCO-EI, Docket No. 041291-EI, In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (Feb. 17, 2005)(granting FPL's request for an interim surcharge subject to refund).

<sup>30</sup> Order No. PSC-05-0937-PCO-EI, Docket No. 041291-EI, In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (Feb. 17, 2005)(granting recovery of FPL's 2004 storm costs for recovery via a 3-year surcharge); Order No. PSC-05-0748-FOF-EI, Docket No. 041272-EI, In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc. (July 14, 2005) (granting recovery of PEF's 2004 storm costs for recovery via a 2-year surcharge); Order No. PSC-05-0250-PAA-EI, Docket No. 050093-EI, In re: Petition for approval of stipulation and

securitization in § 366.8260, Florida Statutes. Given the range of options for recovery of its storm costs after they are incurred, the Commission should minimize the amount of money that customers must prepay to FPL to recover those costs.

## **VI. Other Good Regulatory Policies**

There are other policies that should be specified in the Commission final order in this case for consumer protection.

- a. Utilities assist one another for storm damage restoration. FPL uses employees, materials and equipment that are funded from base rates. Other utilities reimburse FPL for these costs. As a matter of public policy reimbursement of funds that came indirectly from customers should flow back indirectly for the benefit of customers by using the reimbursement proceeds to increase the storm damage reserve account.<sup>31</sup>
- b. Part of the storm reserve bond proceeds will be set aside to pay taxes. FPL says \$250 million of storm reserve it seeks will be used for this purpose, but the taxes will not be paid immediately. They will be strung out over 12 years. In the meantime, the amount is cost free capital. The deferred taxes should reduce FPL's AFUDC rate until taxes are paid.<sup>32</sup>
- c. Income taxes can be avoided altogether if the Commission will establish a regulatory policy to match storm damage surcharge collections with storm damage expenses.
- d. Utility regulation is based on the proposition that utilities are monopolies with captive customers. Rate regulation is required because customers have no viable alternative to utility service; that is, regulation is a proxy for competition. The Commission sets rates. The rates are based on the utilities' cost to serve the customers. Because the costs of service are different based on the type of service received customers are divided into different classes. Each customer class and customers within each class are charged based on the cost to serve them. They are not required to subsidize other customers. As a matter of storm damage policy customers should not be charged to repair parts of the system that do not serve them.<sup>33</sup>
- e. The securitization statute says the cost of service study used in setting rates shall be "the last filed cost of service study."<sup>34</sup> The Commission needs to construe that language so that it will be constitutional. For example, if a law said plaintiffs shall be

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settlement for special accounting treatment and recovery of costs associated with Hurricane Ivan's impact on Gulf Power Company (March 4, 2005)( granting recovery of Gulf Power's 2004 storm costs for recovery via a 2-year surcharge)

<sup>31</sup> T 975, L18 – T 976, L 20.

<sup>32</sup> T 496, L14 – T 501, L22.

<sup>33</sup> E 151.

<sup>34</sup> §366.8260(2)(b)(2)(h), Florida Statutes (2005)

entitled to recover the amount of damages claimed in their complaint. It would be unconstitutional because defendants would be denied due process. Courts would construe this language to mean plaintiffs shall be entitled to recover the amount of damages claimed in their complaint and proved with competent substantial evidence. The cost of service study filed by FPL in its last base rate case was actively disputed. The case was settled. The study was never approved.<sup>35</sup> Last filed study must mean last study filed and approved by the Commission to pass constitutional muster. Otherwise adversely affected customers will be denied due process. In addition to that defect the language would constitute an unlawful delegation of legislative authority from the legislature to FPL to determine the correct cost of service rather than retaining the authority within the duly appointed Public Service Commission. The Commission should utilize the same method used in Docket 041291-EI (E 151), which uses the cost-of-service methodology last approved by the Commission.

- f. FPL's Chief Accounting Officer, Mr. Davis, testified that FPL does not invest its storm reserve in its FPL Group affiliates, but is not prohibited from doing so by the Company's investment policy.<sup>36</sup> Mr. Davis deferred to the Commission to determine whether a proper regulatory policy would be to prohibit utilities from investing the funded storm reserve in affiliated companies<sup>37</sup>. FIPUG requests that the Commission make this clarification in its final order.

#### **STATEMENT OF ISSUES AND POSITIONS**

FIPUG adopts the position of OPC with respect to the following issues: 1-3, 5-16, 18-22, 25-34, 38, 50-53, 56-60, 62-63, 67, 71, and 74. With respect to all other positions at issue, FIPUG's positions appear below:

#### **CHARGES TO STORM RESERVE**

##### **2004 Storm Costs**

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

**FIPUG:** \*\*Interest should be reduced to reflect the reduction to the 2004 storm costs included in the reserve as recommended by OPC witness DeRonne.\*\*

##### **2005 Storm Costs**

**ISSUE 17:** If the Commission applies in this docket the methodology applied in Order No. PSC-05-0937-FOF-EI should the Commission take into account:

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<sup>35</sup> T 776, L 7-9.

<sup>36</sup> T 473, L 4-15.

<sup>37</sup> *Id.*

- a. Amounts not recovered through base rates due to the disruption of service due to the 2005 storm season or the absence of customers after the storms;
- b. Overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of some personnel to storm assignments (backfill work);
- c. Costs associated with work that must be postponed due to the urgency of storm restoration and accomplished after the restoration was completed (catch-up work);
- d. Uncollectible accounts receivable write-offs directly related to the storms;
- e. Incremental contractor, outside professional services and temporary labor costs due to work postponed due to the urgency of storm restoration and accomplished after the restoration was completed;
- f. Costs that would have otherwise been charged to clauses; and
- g. Costs that would have otherwise been charged to capital.
- h. Vacation Buy-Backs;
- i. Nuclear Payroll Expected to be Recovered Through Insurance

**FIPUG:**

a. **\*\*No.** During the storm period, FPL sold more electricity to retail customers than it anticipated it would sell according to documents filed in Docket No. 050001-EI. The estimated sales provided enough money to meet ordinary O&M expenses. In calculating retail revenues, the revenues from all retail customers is the controlling factor, not the revenues received from a relatively small number of customers whom FPL was unable to serve during the period of storm restoration. FIPUG also agrees with OPC.\*\*

b. – i. **\*\*Agree with OPC.\*\***

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

**FIPUG:**

**\*\*The Commission should make an adjustment to offset FPL's storm damage costs by the proceeds received from assisting other utilities with storm restoration since 2003. In the future, FPL should credit such revenues to the storm damage reserve. Agree with OPC as to any other adjustments.\*\***

**PRUDENCE OF 2005 STORM CHARGES**

**ISSUE 35:** Should the Commission require FPL's storm recovery costs for 2005 be

**shared between FPL's retail customers and FPL and, if so, to what extent?**

**FIPUG:** **\*\*FIPUG generally supports reasonable risk/reward sharing between utilities and their customers. In the as-of-yet undocketed storm damage rule review, FIPUG argued that the Commission should adopt a sharing approach. Nevertheless, FIPUG is bound by the settlement agreement in FPL's last base rate case (Docket 050045-EI), where the parties agreed that for the period of the agreement FPL "will be permitted to recover prudently incurred costs associated with events covered by Account No. 228.1 [the storm damage account]. . . ."**\*\*

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

**FIPUG:** **\*\*The appropriate amount of adjustments should be the total of OPC's proposed adjustments.\*\***

#### **STORM DAMAGE RESERVE**

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

**FIPUG:** **\*\*\$150 million.\*\***

#### **RECOVERY MECHANISM**

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

**FIPUG:** **\*\*No. Securitization will result in higher overall costs for the customer, which outweigh the value of securitization to mitigate rate impacts.\*\***

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

**FIPUG:** **\*\*The unamortized balance of the 2004 storm costs should continue to be recovered via a surcharge. Securitization will result in higher overall costs for the ratepayer.\*\***

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

**FIPUG:** **\*\*The Commission should not authorize FPL to recover via securitization.**

However, if securitization is granted, the appropriate amount to be securitized should be based on the following: (1) the recovery of the unamortized balance of the 2004 storm costs; (2) the replenishment of the storm reserve to \$150 million, and; (3) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments.\*\*

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

**FIPUG:** \*\*The Commission should grant recovery via a surcharge. The surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments.\*\*

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

- a. The amount approved for recovery; and
- b. The cost allocation to the rate classes.

**FIPUG:** \*\*The Commission should grant recovery via a surcharge. The surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million, and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments. Costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI, consistent with the method used in Docket No. 041291-EI.\*\*

#### **Terms and Conditions of Financing Order for Securitized Amounts**

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

**FIPUG:** \*\*For the benefit of future customers, the Commission should order FPL to adjust the monthly AFUDC rate to reflect the changes in the deferred tax balance resulting from the storm charge. The Commission can protect current customers by ordering FPL to use part of the deferred tax account to pay current taxes.\*\*

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

**FIPUG:** \*\*Yes, but the storm reserve account balance should reflect the total sum

collected from customers for the reserve via the Storm Bond Repayment Charge and the Storm Bond Tax Charge.\*\*

**ISSUE 47:** If recovery of the taxes assessed on the storm recovery charges are not securitized, should the tax charge be included in the irrevocable financing order?

**FIPUG:** \*\*Yes, but the storm reserve account balance should reflect the total sum collected from customers for the reserve via the Storm Bond Repayment Charge and the Storm Bond Tax Charge. However, if storm recovery charges are not securitized, there is no need for an irrevocable financing order.\*\*

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

**FIPUG:** \*\*Yes.\*\*

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

**FIPUG:** \*\*The funds should be added to the storm reserve or refunded to FPL's customers.\*\*

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

**FIPUG:** \*\*Staff witnesses have recommended criteria that will result in greater marketability and lower costs, these recommendations should be adopted, except the bonds cannot pledge the full faith and credit of the state or any local government.\*\*

**ISSUE 64:** Should the Financing Documents be approved in substantially the form proposed by FPL, subject to modifications as addressed in the draft form of financing order?

**FIPUG:** \*\*FIPUG supports the testimony of Staff witness Fichera. \*\*

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

**FIPUG:** \*\*FIPUG supports the testimony of Staff witness Fichera. \*\*

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

**FIPUG:** \*\*FIPUG supports the testimony of Staff witness Fichera. \*\*

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

**FIPUG:** \*\*No. FIPUG supports a 3 year surcharge, which will provide considerable savings to customers on interest, taxes and financing costs.\*\*

**ISSUE 75:** If the Commission approves the substance of FPL's primary recommendation, should the financing order require FPL to reduce the aggregate amount of the bond issuance in the event market rates rise to such an extent that the initial average retail cents per kWh charge associated with the bond issuance would exceed the average retail cents per kWh 2004 storm surcharge currently in effect?

**FIPUG:** \*\*No position. \*\*

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

- a. The amount approved for recovery;
- b. The calculation of the surcharge;
- c. The cost allocation to the rate classes; and
- d. The surcharge's termination date.

**POSITION:**

**FIPUG:** a. \*\*The Commission should grant recovery via a surcharge. The surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million, and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments. Costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI, consistent with the method used in Docket No. 041291-EI.\*\*

b. \*\*The Commission should grant recovery via a surcharge. The surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million, and; (2) the recovery of FPL's 2005 storm costs minus

OPC's proposed adjustments. Costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI, consistent with the method used in Docket No. 041291-EI.\*\*

c. \*\*The Commission should grant recovery via a surcharge. The surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million, and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments. Costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI, consistent with the method used in Docket No. 041291-EI.\*\*

d. \*\*Agree with STAFF.\*\*

### **Terms for Traditional Recovery of Non-Securitized Amounts**

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

**FIPUG:** \*\*Yes. Each month FPL should calculate interest on the outstanding net-of-tax balance of the storm damage account, which shall be the outstanding balance of the storm damage account less 38.575% taxes.\*\*

**ISSUE 78:** If the Commission approves a recovery mechanism other than securitization, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

**FIPUG:** \*\*The storm damage account should be credited each month with the actual amount recovered from ratepayers.\*\*

### **RATES**

**ISSUE 80:** If the Commission approves recovery of any storm-related costs through securitization, how should the recovery of these costs be allocated to the rate classes?

**FIPUG:** \*\* With respect to allocating costs between customer classes, FIPUG endorses the approach that matches revenue collections to storm costs incurred — that is, customers taking service from the transmission system should not be charged for damages to the distribution system. Costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI, consistent with the method used in Docket No. 041291-EI.\*\*

**ISSUE 81:** If the Commission approves recovery of any storm-related costs through securitization, what is the appropriate recovery period for the Storm Recovery Charge?

**FIPUG:**      **\*\*Agree with FPL.\*\***

**ISSUE 82:**    **Is FPL's proposed Storm Charge True-Up Mechanism appropriate and consistent with 366.8260, Florida Statutes and should it be approved? If not, what formula-based mechanism for making expeditious periodic adjustments to storm-recovery charges should be approved?**

**FIPUG:**      **\*\*Agree with FPL.\*\***

**OTHER**

**ISSUE 88:**    **Should this docket be closed?**

**FIPUG:**      **No position.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Posthearing Brief and Statement of Issues and Positions has been furnished by electronic mail and U.S. Mail this 28th day of April 2006, to the following:

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