BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Progress Energy Florida, Inc.'s petition for approval of storm cost recovery clause for extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan.	))))))	Docket No.: 041272 Submitted for Filing: April 26, 2005

PROGRESS ENERGY FLORIDA'S POST-HEARING STATEMENT AND BRIEF IN SUPPORT OF ITS PETITION TO ESTABLISH A STORM COST RECOVERY CLAUSE

Progress Energy Florida, Inc. ("PEF" or the "Company"), submits its Post-Hearing Statement of Issues and Positions, Findings of Fact and Conclusions of Law, and Brief in support of its Petition to establish a Storm Cost Recovery Clause to allow PEF to recover from its ratepayers over two years its reasonable and prudent costs in excess of the balance in its Storm Damage Reserve for the extraordinary storm-related expenditures due to Hurricanes Charley, Frances, Jeanne, and Ivan.

I. Post-Hearing Statement of Issues and Positions.

ISSUE 1: This issue was withdrawn by the agreement of all parties and Staff.

ISSUE 2: Has PEF quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the storm reserve? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Florida Public Service Commission ("Commission") orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including Company personnel expenses, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 3: Has PEF properly treated payroll expense associated with managerial employees when determining the costs that should be charged to the storm reserve? If not, what adjustments should be made?

*Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is

entitled to recover all of its direct storm-related costs, including Company personnel expenses, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.*

ISSUE 4: At what point in time should PEF stop charging costs related to the 2004 storm season to the storm damage reserve?

PEF should stop charging costs related to the 2004 storm season to the Storm Damage Reserve when PEF has completed all of its storm-related work necessitated by Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 5: Has PEF charged to the storm reserve appropriate amounts relating to employee training for storm restoration work? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including the Company's expenses to train employees for storm restoration work, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 6: Has PEF properly quantified the costs of tree trimming that should be charged to the storm reserve? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including the costs of tree trimming incurred to respond to and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 7: Has PEF properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including expenses related to Company-owned fleet vehicles, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 8: Has PEF properly determined the costs of call center activities that should be charged to the storm damage reserve? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including the costs of call center activities, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 9: Has PEF appropriately charged to the storm reserve any amounts related to advertising expense or public relations expense for the storms? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including the Company's storm-related advertising and media expenses, incurred to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 10: Has uncollectible expense been appropriately charged to the storm damage reserve? If not, what adjustments should be made?

Yes, consistent with the Commission-approved self insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy, PEF is entitled to recover all of its direct storm-related costs, including uncollectible expenses incurred as a result of Hurricanes Charley, Frances, Ivan, and Jeanne.

ISSUE 11: Should PEF be required to offset its storm damage recovery claim by revenues it has received from other utilities for providing assistance in their storm restoration activities? If so, what amount should be offset?

Hurricane restoration work for other utilities is no different than hurricane restoration work for the Company; revenues received from other utilities offset the costs of deploying workers to those utilities. When they complete the assignments, they return to their work at PEF at PEF's expense. There are no excess revenues that can be used to offset PEF's unrelated storm damage recovery.

ISSUE 12: Has PEF appropriately removed from the costs it seeks in its petition all costs that should be booked to the reserve for cost of removal expense as the cost of removing plant damaged during the storm? If not, what adjustments should be made? (This issue was partially stipulated as a Category 1 Stipulation, Number 1, in the Prehearing Order, page 3, dated March 28, 2005, and approved by the Commission on March 30, 2005).

Yes, the Company has appropriately accounted for the cost of removal as part of the capital costs that will be deferred to the Company's next base rate proceeding and, therefore, no further adjustments should be made.

ISSUE 13: Has PEF appropriately quantified the costs of materials and supplies used during storm restoration that should be charged to the storm reserve? If not, what adjustments should be made?

*This issue was stipulated to by all parties and Staff as a Category 1 Stipulation, Number 2, in the Prehearing Order, page 3, dated March 28, 2005, and approved by the Commission on March

30, 2005.*

ISSUE 14: Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of reasonable and prudently incurred storm-related costs to be charged against the storm damage reserve subject to true-up?

No adjustments are warranted based on the resolution of the preceding issues, and PEF is entitled to recover all of its storm-related costs that it is seeking in this matter, $251.9 million, based on its estimates.

ISSUE 15: Does the stipulation of the parties that the Commission approved in Order No. PSC-02-0655-AS-EI affect the amount or timing of storm-related costs that PEF can collect from customers? If so, what is the impact?

No, the Settlement has no bearing on PEF's Petition under the Commission-approved self-insurance plan, the Commission's orders and policy, and utility practice consistent with the Commission's orders and policy.

ISSUE 16: In the event that the Commission determines the stipulation approved in Order No. PSC-02-0655-AS-EI does not affect the amount of costs that PEF can recover from ratepayers, should the responsibility for those costs be apportioned between PEF and retail ratepayers? If so, how should the costs be apportioned?

No, the Company is entitled to recover all reasonable and prudently incurred storm costs, in accordance with Commission-approved procedures for accounting for these costs.

ISSUE 17: What is the appropriate amount of storm-related costs to be recovered from the customers?

The appropriate amount is all direct storm-related costs incurred to prepare for, respond to, and recover from the 2004 hurricanes, consistent with the Commission-approved self-insurance plan, Commission orders and policy, and prior practice in accordance with Commission orders and policy. The Company's direct storm-related O&M costs, including costs exceeding charges under normal operating conditions for capital expenditures, as allocated to the Company's retail jurisdiction, is, based on its estimates, $251.9 million.

ISSUE 18: If recovery is allowed, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

The appropriate accounting treatment would be treatment that is consistent with that provided for in any other cost recovery mechanisms approved by the Commission.

ISSUE 19: What is the appropriate methodology to calculate interest charged on the amount of storm-related costs permitted to be recovered from customers? (This issue was partially stipulated as a Category 1 Stipulation, Number 3, in the Prehearing Order, page 3, dated March 28, 2005 and approved by the Commission on March

30, 2005).

The accrual and collection of interest on the amount of storm-related costs in excess of the Storm Damage Reserve, consistent with practice under other cost recovery clauses, reimburses PEF for its carrying costs on those amounts, and interest should be calculated at the current commercial paper rate.

ISSUE 20: What mechanism should be used to collect the amount of the storm-related costs authorized for recovery?

The proper mechanism for the recovery of all of PEF's direct storm-related costs arising from Hurricanes Charley, Frances, Ivan, and Jeanne is a Storm Cost Recovery Clause.

ISSUE 21: If the Commission approves recovery of any storm-related costs, how should they be allocated to the rate classes?

This is a Category 2 Stipulation, Number 1, in the Prehearing Order, page 4, dated March 28, 2005, and approved by the Commission on March 30, 2005: All storm-related costs above the Storm Damage Reserve should be recovered from all retail customers and allocated among customers in the various rate classes in the same manner that costs were allocated among the rate classes in the Company's last base rate proceeding.

ISSUE 22: What is the proper rate design to be used for PEF to recovery storm-related costs?

PEF proposes allocating the costs among rate classes using the Company's last approved cost of service study, i.e., allocating production demand-related costs using the 12 Coincident Peak and 1/13th Average Demand method, production energy-related costs based on energy usage, transmission costs using the 12 CP method, and distribution costs using the Non-Coincident Peak method. This allocation of charges under the Storm Cost Recovery Clause mirrors the allocation of costs under other approved cost recovery clauses.

ISSUE 23: What is the appropriate recovery period?

This issue was stipulated to by all parties and Staff as a Category 1 Stipulation, Number 4, in the Prehearing Order, page 4, dated March 28, 2005, and approved by the Commission on March 30, 2005: "PEF shall collect the amount of storm-related costs that the Commission authorizes it to recover from customers over a maximum period of two years."

ISSUE 24: If the Commission approves a mechanism for the recovery of storm-related costs from the ratepayers, on what date should it become effective?

This issue was stipulated to by all parties and Staff as a Category 1 Stipulation, Number 5, in the Prehearing Order, page 4, dated March 28, 2005 and approved by the Commission on March 30, 2005: "Recovery shall begin with the first billing cycle of the following month."

ISSUE 25: Should PEF be required to file tariffs reflecting the establishment of any

Commission-approved mechanism for the recovery of storm-related costs from the ratepayers?

* This issue was stipulated to by all parties and Staff as a Category 1 Stipulation, Number 6, in the Prehearing Order, page 4, dated March 28, 2005, and approved by the Commission on March 30, 2005: "Yes."*

ISSUE 26: What are the effects, if any, of the study that PEF (then Florida Power) submitted to the Commission in Docket No. 930867-EI on February 28, 1994 and Order No. PSC-94-0852-FOF-EI, issued in Docket Nos. 940621-EI and 930867-EI on July 13, 1994 on the manner in which PEF may account for storm-related costs in this proceeding?

The Study and Order are dispositive regarding PEF's costs because the Study was required for Reserve accruals and charges, the Docket was held open, and the Study was approved for the accrual and the Dockets closed. Further, a similar FP&L Study was deemed adequate, PEF charged costs using its Study for ten years, and the Study constitutes sound policy because it mirrors insurance, is easy to administer, avoids incremental cost approach issues, and fairly approximates the hurricane's disruptive impact.

ISSUE 27: Should the docket be closed?

Yes.

II. Proposed Findings of Fact and Conclusions of Law.

Based on the stipulations of the parties, the undisputed or greater weight of the evidence at the hearing, and the Commission's Rules, Orders, and other applicable law, the Commission finds that:

1. PEF shall collect the amount of storm-related costs that the Commission authorizes PEF to recover from customers over a maximum period of two years.

2. The Company's storm-related costs due to the 2004 hurricanes are not included in, or contemplated as a component of, the Company's base rates and charges.

3. The Stipulation and Settlement of the Company's base rate proceeding in Docket No. 000824-EI that the Commission approved in Order No. PSC-92-02-0655-AS-EI (hereinafter the "Settlement") does not bar PEF's Petition because PEF's request for recovery of its storm-related costs due to the 2004 hurricanes is not a request for an increase in the Company's base rates and charges.

4. The Settlement that the Commission approved in Order No. PSC-92-02-0655-AS-EI further does not bar PEF's Petition because PEF's request for recovery of its storm-related

costs through a Storm Cost Recovery Clause is not a request to recover new capital items which traditionally and historically would be recoverable through base rates.

5. Rule 25-6.0143(4)(b), F.A.C. requires the Company to charge all storm-related costs to the Storm Damage Reserve and precludes the Company from expensing its storm-related costs.

6. The Settlement did not contain a request for a waiver of Rule 25-6.0143(4)(b), F.A.C., and the Commission did not grant a waiver of Rule 25-6.0143(4)(b), F.A.C. in its Order approving the Settlement.

7. PEF's earnings may exceed the 10% ROE referred to in paragraph 7 of the Settlement.

8. The 10% ROE referred to in paragraph 7 of the Settlement cannot be used as a cap on PEF's earnings during the Settlement.

9. An apportionment of PEF's storm-related costs due to the hurricanes between PEF and its customers cannot be supported by the 10% ROE referred to in paragraph 7 of the Settlement without violating its terms.

10. The Settlement does not affect the amount or timing of the storm-related costs that the Company can collect from customers.

11. The Company's storm-related costs due to the 2004 hurricanes are volatile, unpredictable, and irregular in occurrence.

12. A Storm Cost Recovery Clause is the appropriate mechanism for recovery of the Company's storm-related costs due to the 2004 hurricanes.

13. PEF appropriately accounted for its storm-related costs consistent with the Study PEF was required to file with the Commission by Order No. PSC-93-1522-FOF-EI in Docket No. 930867-EI.

14. The Study PEF was required to file with the Commission by Order No. PSC-93-1522-FOF-EI in Docket No. 930867-EI was approved by the Commission in Order No. PSC-94-0852-FOF-EI in Docket Nos. 940621-EI and 930867-EI when the accrual to the Storm Damage Reserve was increased based on PEF's Study and Docket Nos. 940621-EI and 930867-EI were closed.

15. PEF has appropriately accounted for non-management employee payroll expense, managerial employee payroll expense, employee training costs for the 2004 hurricanes, tree trimming costs, Company-owned fleet vehicle expenses, call center activity costs, advertising and public relations expense for the 2004 hurricanes, and uncollectible expense caused by the 2004 hurricanes, in PEF's direct costs for preparing for, responding to, and recovering from the 2004 hurricanes.

16. PEF shall charge to the Storm Damage Reserve only the costs of materials and supplies actually used during the 2004 hurricane restoration activities.

17. All charges to the Storm Damage Reserve should continue until PEF has completed all storm-related work required by the 2004 hurricanes.

18. PEF is not required to offset its storm-related costs by payments received from other utilities to reimburse PEF for PEF's costs of providing assistance to other utilities during hurricane or storm restoration activities.

19. PEF shall book to plant in service the normal cost of new plant additions under normal operating conditions, and shall book to the Storm Damage Reserve, as extraordinary operation and maintenance expense, the cost of new plant additions that exceed those normal amounts.

20. PEF has appropriately accounted for the cost of removal as part of the capital costs that will be deferred to the Company's next base rate proceeding.

21. The total amount of the reasonable and prudent costs to be recovered by PEF under the Storm Cost Recovery Clause is $251.9 million subject to true-up.

22. The balance of the storm-related costs due to the 2004 hurricanes subject to recovery under the Storm Cost Recovery Clause shall be accounted for in the manner that balances are accounted for under other clauses approved by the Commission.

23. PEF shall accrue and collect interest only on the storm-related costs authorized for recovery, commencing upon the Commission's vote in this docket, and PEF shall refund any amount above the authorized amount with interest. PEF shall calculate interest by applying the 30-day commercial paper rate using a 30-day Dealer Commercial Paper rate, as published in the Wall Street Journal, which is high-grade unsecured notes sold through dealers by major corporations. The recovery of the authorized storm-related costs shall become effective 30 days following the Commission's vote and recovery shall begin with the first billing cycle of the following month. PEF shall file tariffs reflecting the recovery mechanism.

24. Interest shall accrue on the balance of the storm-related costs due to the 2004 hurricanes subject to recovery under the Storm Cost Recovery Clause less the income tax savings realized by PEF.

25. PEF's storm-related costs due to the 2004 hurricanes shall be recovered from all retail customers and allocated among customers in the various rate classes in the same manner that costs were allocated among the rate classes in the Company's last base rate proceeding using the billing factors for each customer class based on the cost allocation factors used by the Company consistent with PEF's Commission-approved cost of service study and other cost recovery clauses established by the Commission.

III. PEF's Brief in Support of Its Petition to Establish a Storm Cost Recovery Clause for the 2004 Hurricane Season.

After Hurricane Andrew in 1992, PEF and other investor-owned utilities in Florida experienced difficulty renewing their insurance programs for transmission and distribution ("T&D") lines with adequate coverage at a reasonable cost. As a result, PEF petitioned the Commission to implement a self-insurance plan for storm damage to its T&D lines and the Commission approved that plan.[1] The Company has been operating under a self-insurance plan since 1993 that includes: (1) the continued search for commercial T&D insurance in adequate amounts at reasonable prices; (2) ongoing accruals to an unfunded Storm Damage Reserve to address the costs incurred as a result of non-catastrophic storms, and (3) the ability to petition the Commission if PEF "experiences significant storm related damage" for "deferral, amortization or recovery of prudently incurred costs in excess of the reserve." PEF Self-Insurance Order at *8; (Tr. Vol. 3, p. 216, L. 14-23, p. 287, L. 16-25; Ex. 42). With four back-to-back hurricanes in 2004, PEF has now experienced the "significant storm related damage ... in excess of the reserve" that triggers the petition for recovery contemplated by the self-insurance program established by the Commission.

PEF seeks to recover its storm-related operation and maintenance ("O&M") costs, including its costs in excess of typical charges under normal operating conditions for capital expenditures made during the hurricanes (hereinafter collectively referred to as the "storm-related O&M costs"). PEF petitions the Commission for recovery of its storm-related O&M costs directly from the customers who benefited from the Company's restoration efforts under a Storm Cost Recovery Clause. There is no dispute regarding the reasonableness or prudence of

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[1] In re: Petition of Florida Power Corporation for authorization to implement a self-insurance program for storm damage to its T&D lines and to increase annual storm damage expenses, Order No. PSC-93-1522-FOF-EI, Docket No. 930867-EI, 1993 Fla. PUC LEXIS 1339 (Oct. 15, 1993) (hereinafter the "PEF Self-Insurance Order").

the Company's efforts to restore service during and following the 2004 hurricanes; nor is there any dispute regarding the reasonableness or prudence of the costs incurred by the Company in those efforts. (Tr. Vol. 6, p. 616, L. 17-25, p. 617, L. 1-4; Vol. 7, p. 792, L. 2-10). Instead, the present dispute with the intervenors concerns only what the appropriate recovery mechanism should be and what amount and type of storm-related O&M costs should be recovered by the Company.

Based on the stipulations of the parties approved by the Commission, the evidence presented at the hearing, the law, and sound regulatory policy, PEF's Petition should be granted. The storm-related O&M costs incurred by the Company in excess of the Storm Damage Reserve to prepare for, respond to, and recover from the 2004 hurricane season in the amount of $251.9 million, subject to true-up, should be recovered from PEF's customers over a two-year period pursuant to a Storm Cost Recovery Clause.

A. A Storm Cost Recovery Clause is the Appropriate Recovery Mechanism for PEF's Storm-Related O&M Costs in Excess of the Storm Damage Reserve from the 2004 Hurricanes.

The Commission approved the parties' stipulation that PEF shall collect the amount of storm-related O&M costs that the Commission authorizes PEF to recover from customers over a maximum period of two years. Prehearing Order, p. 4; (Tr. Vol. 1, p. 10, L. 9-17).[2] In effect, the parties agreed to a recovery clause mechanism, whether or not it is called an "immediate recovery" or a "surcharge to base rates," as the Florida Industrial Power Users Group ("FIPUG")

[2] Two intervenors, Buddy L. Hansen and the Sugarmill Woods Civic Association, Inc. ("Sugarmill Woods") and the Florida Retail Federation ("FRF"), continued to argue and presented evidence through the testimony of Mr. Stewart that all of PEF's storm-related O&M costs should be addressed in a base rate proceeding, although they failed to explain how such costs would be addressed in such a proceeding. Prehearing Order, pp. 15-17; (Tr. Vol. 7, p. 847, L. 4-18). Because they stipulated to the recovery of the Company's authorized storm-related O&M costs from customers up to a maximum of two years and failed to object when this stipulation was approved by the Commission at the hearing, Sugarmill Woods and FRF's arguments and evidence that contradict this stipulation should be flatly rejected.

and Office of Public Counsel ("OPC"), respectively, suggest. (Tr. Vol. 7, p. 747, L. 3; Vol. 3, p. 312, L. 18-25). As Mr. Portuondo pointed out, the effect would be "one and the same" because the storm-related O&M costs recovered directly from customers are "separate and independent from base rates." (Tr. Vol. 3, p. 312, L. 18-25). Indeed, the intervenor witnesses agreed that the storm-related O&M costs from the 2004 hurricanes were not included in the Company's base rates. (Tr. Vol. 6, p. 624, L. 9-22; Vol. 7, p. 805, L. 16-20; p. 845, L. 4-11). The intervenors' proposed surcharge mechanism for the recovery of whatever storm-related O&M costs are authorized by the Commission for collection from customers is, therefore, in effect a cost recovery clause mechanism.

The selection of a cost recovery clause mechanism for the Company's storm-related O&M costs necessarily follows in any event from the undisputed evidence that the Company's storm-related O&M costs are the types of costs that such clauses are designed to address and the Commission's prior orders permitting the recovery of similar, extraordinary costs under other cost recovery clauses. A cost recovery clause, moreover, is the recovery mechanism sought by PEF and recognized by the Commission as an appropriate mechanism for addressing storm-related costs in excess of the Storm Damage Reserve under the Commission's orders establishing the self-insurance programs for T&D storm damage for PEF and Florida Power & Light Company ("FPL"). For these reasons, the Commission should establish a Storm Cost Recovery Clause as the most reasonable mechanism for PEF to recover its extraordinary storm-related O&M costs due to the 2004 hurricanes from its customers.

The undisputed evidence – including the intervenors' experts' testimony – is that: (1) the 2004 hurricane season was unprecedented; (2) the costs to prepare for, respond to, and recover from the 2004 hurricanes were unprecedented; (3) the Company's storm-related O&M costs

were unpredictable, volatile and non-recurring in nature; and (4) the Company's storm-related O&M costs were not contemplated by, nor included in, the Company's base rates.[3] This evidence establishes that the storm-related O&M costs are the types of costs that are recovered from customers under a cost recovery clause mechanism. [4]

Cost recovery clauses are designed to provide utilities recovery for volatile, irregularly occurring costs that are beyond the ability of the utilities accurately to predict or to control when costs are incurred. (Tr. Vol. 3, pp. 227-8). For example, the Fuel and Purchased Power Cost Recovery Clause ("Fuel Clause") allows utilities to pass through their reasonable and prudently incurred fuel costs directly to their customers. Fuel costs are volatile and irregular in a similar sense to severe storm costs because they, too, vary from year-to-year and even day-to-day with a variety of different factors. (Tr. Vol. 3, p. 228, L. 15-23). As a result of the volatility and irregularity in the extent of fuel costs, the Commission recognized that they are beyond the Company's control and the Commission created and implemented a cost recovery clause to provide for their recovery.[5]

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[3] Tr. Vol. 3, p. 289, L. 1-16; Vol. 6, p. 617, L. 22-25, p. 618, L. 1-6, p. 619, L. 5-14, p. 624, L. 9-22; Vol. 7, p. 705, L. 23-25, p. 706, L. 1-13; p. 804, L. 16-22, p. 805, L. 5-20; p. 844, L. 7-25, p. 845, L. 1-11.

[4] It is unclear whether intervenors continue to assert the Company's Stipulation and Settlement of its base rate proceeding in Docket No. 000824-EI (hereinafter the "Settlement"), is a complete bar to the Company's Petition because they have not framed this issue in the Prehearing Order and did not raise it at the hearing. However, in the event this is still an issue, this undisputed evidence demonstrates the Settlement is not a bar to the Company's Petition. The Settlement provides that the Company will not seek an increase "in base rates and charges" nor "use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates," and, as the undisputed evidence demonstrates, the Company's storm-related costs due to the 2004 hurricanes are not covered by base rates. Therefore, the Settlement cannot bar the recovery sought in the Petition. The intervenors' remaining arguments concerning the Settlement are equally meritless and addressed below.

[5] The Commission has the authority to establish cost recovery clauses when necessary to fairly provide for the recovery of the utility's cost of service. See §§ 366.04(1) (granting the Commission jurisdiction to regulate and supervise with respect to rates and service); 366.04(2) (granting the Commission power over electric reliability for "emergency purposes"); 366.05(8) (granting power to take steps to ensure the adequacy of the electric grid, including installation and repair, with the "costs to be distributed in proportion to the benefits received"); Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1969) (ruling that "[t]he regulatory powers of the Commission, ... are exclusive and, therefore, necessarily broad and

In addition, the Commission has extended the Fuel Clause to provide for recovery directly from customers of other non-fuel costs under extraordinary circumstances when a utility cannot reasonably anticipate the costs that benefit the utility's customers. E.g., In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, Order No. PSC-04-0411-FOF-EI, Docket No. 040001-EI, 2004 Fla. PUC Lexis 411, *11-13 (April 21, 2000) (citing the "long history of decisions in which this commission allowed recovery of certain expenses through the fuel clause that would traditionally be recovered through base rates."). Most recently, the Commission allowed PEF, FPL, and Tampa Electric Company to recover security expenditures incurred in response to the terrorist attacks of September 11, 2001 through the Fuel Clause even though security costs were traditionally and historically recoverable through base rates. The Commission explained that such extraordinary security costs were the "type of cost [that] was a potentially volatile cost," where the clause provided "a good match between the timing of the incurrence and recovery of the cost," thus "making it appropriate for recovery through a cost recovery clause." In re: Fuel and purchased power cost recovery clause and generating performance incentive factor, Order No. PSC-02-1761-FOF-EI, Docket No. 02000-EI, 2002 Fla. PUC Lexis 1120, *8 (Dec. 13, 2002).

After all, as the Commission has held, "the intent of the clauses is to address costs that may fluctuate or increase significantly and unpredictably from year to year" because "[i]n such cases, the costs included in a test year would not adequately capture future costs." In re: Petition for approval of Consumptive Water Use Monitoring Activity, Order No. PSC-00-2092-PAA-EI,

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comprehensive"). Indeed, the Commission has recognized its broad authority to create cost recovery clauses when necessary, noting that "of the various cost recovery clauses associated with the electric industry, only the ECRC and conservation clauses are embodied in statute." In re: Petition for approval of Consumptive Water Use Monitoring Activity and Smith Wetlands Mitigation Plan as new programs for cost recovery through the Environmental Cost Recovery Clause by Gulf Power Company, Order No. PSC-00-2092-PAA-EI, Docket No. 000808-EI, 2000 Fla. PUC Lexis 1417, *4 (Nov. 3, 2000).

2000 Fla. PUC Lexis 1417, *4. Every intervenor witness agreed with PEF that the Company's storm-related O&M costs were the type of costs that would "fluctuate or increase significantly and unpredictably."[6] They further agreed that the 2004 storm-related O&M costs were not contemplated in the Company's base rates,[7] and therefore, they are not the type of costs that can be "included in a test year." Moreover, the parties' stipulation to a recovery from customers over no more than two years acknowledges the need to match the timing of the incurrence of the storm-related O&M costs with their recovery to provide the greatest assurance that the customers who benefited from the costs are the ones paying for them. Based on the nature of the Company's storm-related O&M costs, then, a Storm Cost Recovery Clause is the appropriate recovery mechanism.

A cost recovery clause is consistent with the Commission's orders establishing the self-insurance programs for the Company and FPL.[8] Both PEF and FPL proposed a cost recovery clause as the appropriate mechanism in the event that storm costs exceeded the Storm Damage Reserve. (Tr. Vol. 4, p. 22, L. 14-24); FPL Self-Insurance Order, at *8. While the Commission declined such recovery "at that time," the Commission concluded that it was not going to "foreclose or prevent further consideration at a future date of some type of a cost recovery mechanism, either identical or similar to" the one proposed. FPL Self-Insurance Order, at *11.[9] A cost recovery clause, therefore, was recognized by the Commission as an appropriate recovery mechanism for storm-related costs in excess of the Storm Damage Reserve in the PEF Self-

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[6] Tr. Vol. 3, p. 289, L. 1-16; Vol. 6, p. 617, L. 22-25, p. 618, L. 1-6, p. 619, L. 5-14; Vol. 7, p. 705, L. 23-25, p. 706, L. 1-13; p. 804, L. 16-22, p. 805, L. 5-16; p. 844, L. 7-25.
[7] Tr. Vol. 6, p. 624, L. 9-22; Vol. 7, p. 805, L. 16-20; p. 845, L. 4-11,
[8] PEF Self-Insurance Order, *8; In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company, Order No. PSC-93-0918-FOF-EI, Docket No. 930405-EI, 1993 Fla. PUC LEXIS 761, *11 (June 17, 1993) (hereinafter the "FPL Self-Insurance Order").
[9] All emphasis is added unless otherwise noted.

Insurance Order and the FPL Self-Insurance Order. Id.; PEF Self-Insurance Order at *8.[10]

Indeed, ample evidence exists in the Commission's subsequent orders dealing with the utilities' self-insurance programs to conclude that a Storm Cost Recovery Clause is the preferred recovery mechanism for costs in excess of the Storm Damage Reserve. The Commission has repeatedly expressed that, in the event of catastrophic loss from hurricanes or severe storms, the utility can petition the Commission for "emergency relief."[11] This is not some empty invitation, as the intervenors suggest, rather the Commission must have intended to provide for recovery of such storm costs, otherwise there was no reason for the Commission to invite the utility to file a petition. Moreover, the promise of "emergency relief" reflects the intent to provide the immediate and direct recovery of costs from customers that can be provided outside base rates.

The Commission further made clear that "the costs of storm damage incurred over and above the balance in the reserve and the costs of the use of the lines of credit [to finance out-of-pocket storm costs] would still have to be recovered from the ratepayers." Order No. PSC-98-0953-FOF-EI, p. 5. Because the accrual to the reserve was included in the utility's base rates, to cover the probability of storm damage from non-catastrophic storms, any storm damage costs

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[10]The intervenors argue that the Commission precluded the recovery of storm-related costs under cost recovery clauses because the Commission distinguished storm-related costs in the FPL Self-Insurance Order from costs recovered at that time under existing clauses and noted that storm-related costs had not traditionally been recovered under the existing cost recovery clauses. (E.g., Tr. Vol. 3, p. 315, L. 6-17). All this represents is a matter of historical truth, for storm-related costs at that time had been recovered under third-party insurance policies, and the Commission had no occasion prior to the Self-Insurance Orders to consider what recovery mechanism should exist for storm damage to T&D systems in the absence of third-party insurance. The Commission went on to hold in the very same order that it was not foreclosing the consideration of a cost recovery mechanism for storm-related damages in excess of the reserve "at a future date." FPL Self-Insurance Order, *11.

[11] In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve by Florida Power & Light Company, Order No. PSC-95-0264-FOF-EI, Docket No. 930405-EI, pp. 4, 6 (Feb. 27, 1995); In re: Petition for authorization to increase annual storm fund accrual commencing January 1, 1995 to $20.3 million; (inter alia) by Florida Power & Light Company, Order No. PSC-95-1588-FOF-EI, Docket No. 951167-EI, p. 4, (Dec. 27, 1995); In re: Petition for authority to increase annual storm fund accrual commencing January 1, 1997, to $35 million by Florida Power & Light Company, Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI, p. 5, (July 14, 1998).

"over and above" the reserve balance was not recovered in base rates. If the catastrophic storm damages in excess of the storm reserve balances "have to be recovered from the ratepayers," as the Commission recognized, they necessarily must be recovered outside of base rates and revenues and through a cost recovery clause mechanism. As Mr. Portuondo explained: "This Commission has a long-standing policy of two types of costs. You have the normal recurring costs which are built into base rates. The other type of costs are the costs that are considered in a pass-through mechanism, which are volatile and hard to predict, and for which the Company, as long as it prudently expends those costs, is entitled to dollar-for-dollar recovery of those costs." (Tr. Vol. 3, p. 306, L. 10-19).

This only makes sense. If the costs of catastrophic storms are not included in base rates, as is the case, the Company's investors have not treated such catastrophic events as part of the Company's normal risk profile, and there is no basis to conclude that they assumed the risk of such catastrophic events. (Tr. Vol. 3, p. 267, L. 17-23, p. 318, L. 11-25, p. 319, L. 1-11). Further, because the Company never contemplated including a catastrophic event like the 2004 hurricanes in base rates, (E.g., Tr. Vol. 3, p. 289, L. 1-16), the costs, in Mr. Portuondo's words, "would fall through the cracks if [they] were not" recovered under a clause which is "designed to capture" them. (Tr. Vol. 4, p. 33, L. 10-14). To use base rate revenues to pay for some or all of the storm-related O&M costs, as the intervenors propose, drastically affects the risks that the investors have already assumed and the financial integrity of the Company. (Tr. Vol. 4, p. 26, L. 9-20). This impact on the Company and its investors is not academic, the Company's storm-related O&M costs represent over 75% of the Company's net income for the year, (Tr. Vol. 3, p. 292, L. 1-6), and without prompt recovery of these costs from the customers who benefited from them, there will be serious repercussions for the Company and its investors. (Tr. Vol. 3, p. 335,

L. 2-15; Vol. 4, p. 26, L. 9-20). When PEF has incurred costs in excess of the Storm Damage Reserve by more than $250 million, the Storm Cost Recovery Clause, then, is the only mechanism that allows PEF to recover its costs from ratepayers in time for PEF to be financially prepared for subsequent hurricane seasons. (Id.).

B. PEF Appropriately Accounted for its Storm-Related Costs in a Reasonable and Prudent Manner Consistent with the Study the Commission Required and Approved and Consistent with Sound Regulatory Policy.

PEF incurred an estimated $251.9 million in storm-related O&M costs that it seeks to recover from its customers under the Storm Cost Recovery Clause. PEF further incurred an estimated additional $50 million in capital costs that will be absorbed by the Company in base rates until the Company's next base rate proceeding. PEF accounted for all costs for the 2004 hurricanes consistent with the principles and methodology established as part of its Commission-approved self-insurance program for T&D storm damage.

To begin with, PEF proposed a self-insurance program for T&D storm damage to the Commission that replicated the operation of third-party insurance. (Tr. Vol. 3, p. 246, L. 4-14; Ex. 42, pp. 9-10). Under third-party insurance, PEF received replacement cost coverage for all direct costs incurred to prepare for, respond to, and recover from covered storms. (Tr. Vol. 3, pp. 249, L. 7-9, p. 250, L. 1-4; Ex. 42, pp. 9-10). As a cost-of-service regulated utility, PEF's other costs under the regime of third-party insurance, i.e. its premiums and deductibles, were recovered from its customers. (Tr. Vol. 3, p. 246, L. 4-14).[12] PEF proposed this self-insurance

[12] Mr. Portuondo agreed that there was a "theoretical" possibility that the Company was faced with the potential risk of having to absorb hurricane-related damages under the commercial insurance regime. (Tr. Vol. 3, p. 299, L. 19-24). However, there is no evidence that was the case or that it was any more than a "minimal" risk to the Company, as explained by Mr. Portuondo, given that the Company had a policy for $85 million per occurrence with customers paying the deductibles and premiums at the time. (Tr. Vol. 3, p. 297, L. 3-10). Indeed, FIPUG agreed in its opening statement that prior to Hurricane Andrew "most of the damage to utilities was covered by insurance, so there was no immediate impact on customers or on the utilities themselves." (Tr. Vol. 1, p. 47, L. 15-17).

program as a reasonable means of avoiding the imposition of additional costs on its customers from high premiums for the limited third-party T&D insurance coverage that was available and uninsured T&D losses that third-party insurers were declining to cover. (Id.). PEF certainly did not propose a self-insurance program as a mechanism to shift costs to shareholders that were previously paid either by its customers or insurers under third-party T&D storm damage insurance.

The Commission expressly acknowledged this fundamental premise of the proposed self-insurance program. The Commission determined that the reserve thereafter "would be used to cover storm damage experience for all losses not covered by insurance, including T&D lines and deductibles associated with other property insurance." PEF Self-Insurance Order, at *5. The Commission approved the Company's self-insurance program for T&D storm damage as a reasonable alternative to continued reliance on third-party insurance.

PEF has, of course, replicated its prior, third-party T&D insurance methodology by accounting for all direct costs incurred to prepare for, respond to, and recover from the 2004 hurricanes. (Tr. Vol. 3, pp. 260, 289). OPC's witness, Mr. Majoros, in fact, conceded that this accounting method is appropriate for replacement cost insurance. (Tr. Vol. 7, p. 681, L. 23-24, p. 682, L. 1, p. 698, L. 8-9). When this same methodology is applied in the self-insurance program, the Company's customers, rather than the third-party insurance company, are responsible for all direct costs incurred during the 2004 hurricanes. This is exactly what the self-insurance program for T&D storm damage was designed to do.

As part of the utilities' proposals for self-insurance programs, the utilities and the Commission specifically considered how to account for storm-related expenses. As demonstrated by the uncontroverted evidence at the hearing and explained below, the

Commission held open the self-insurance dockets until it had received and evaluated Studies discussing the basis for accruing funds to the reserve; the utilities prepared and submitted their Studies explaining the accounting for storm-related costs and the accrual to the storm damage reserves; the Commission accepted and approved them, setting the accrual to the Company's reserve based on its Study and closing the dockets; and the Company has applied the methodology for accounting for storm-related costs set forth in its Study for ten years through nine hurricanes and major storms before the 2004 hurricanes without any objection. Unsurprisingly, as the evidence further demonstrated, PEF applied the same methodology to account for storm-related costs during the 2004 hurricanes because this methodology was approved by the Commission and represents sound regulatory policy.

1. The Commission Requires the Company to Submit a Study to Implement the Company's Self-Insurance Program.

PEF's accounting methodology was fully understood by the Commission. In the PEF Self-Insurance Order, the Commission required PEF to submit a Study addressing (1) the treatment of T&D damages under third-party insurance, (2) the type of storm-related expenses the Company intended to draw from the reserve, and (3) the amount of the annual accrual to the reserve to support the self-insurance program. PEF Self-Insurance Order, at *6. The Commission required this Study to address these specific questions because the Commission wanted to know how the Company's self-insurance program for T&D storm damage was going to work.

The Commission declined to approve PEF's proposed accruals until the Commission first reviewed and approved the accounting assumptions on which the accruals were based. Accordingly, the Commission held the docket open until such time as it could review and approve PEF's Study. PEF Self-Insurance Order, *6, *10.

In the earlier FPL Self-Insurance Order, the Commission required FPL to submit a Study that addressed the same questions it asked PEF to address in its Study. This followed an evidentiary hearing on FPL's proposed self-insurance program. The Commission made its reasons for the Study clear in the FPL Self-Insurance Order. The Commission wanted to know what storm-related expenses FPL intended to withdraw from the reserve. FPL Self-Insurance Order, *6-7. For example, the Commission wanted to know if normal salaries would be charged to the reserve if the employees worked on storm-related tasks. The Commission understood that the employees "would be required to spend time away from their everyday work tasks which would result in "catch up" expense." Id. at *6. The Commission was unclear from the evidence presented whether FPC intended to recover its "catch up expense" from the reserve. Id. at *7. These questions, among others, led the Commission to require FPL to submit a Study so that the Commission could understand how the self-insurance program for T&D storm damage was going to work.

Against this background, the Commission subsequently required PEF to submit a Study "similar to that required of FPL in Order No. PSC-93-0918-FOF-EI." PEF Self-Insurance Order, at *6. Nowhere in the Order requiring the Study from PEF did the Commission indicate that any one of the questions it required the Study to address was more important than the others or that PEF was free in its Study to address only some of those questions. Id.; (Tr. Vol. 5, p. 480, L. 4-14). PEF, of course, invested time and expense to address all questions the Commission required PEF to address. (Tr. Vol. 5, p. 480, L. 22-24). PEF also reviewed the FPL Study before filing its own Study with the Commission to comply with the Commission's directive to PEF to file a Study "similar" to FPL. (Tr. Vol. 5, p. 486, L. 7-15).[13] PEF submitted its Study to the

[13] FRF questioned Mr. Portuondo whether PEF had used the FPL Study to "support" PEF's "earlier" request for approval of the self-insurance program and Mr. Portuondo correctly answered no because

Commission in February 1994. (Ex. 42).

The Study was important to the Commission's implementation of the Company's self-insurance program for T&D storm damage. The Commission closed the self-insurance docket and approved PEF's request only after PEF prepared and submitted the Study and the Commission reviewed and approved it. In re: Investigation into Currently Authorized Return on Equity and Earnings of Florida Power Corporation; In re: Petition for Authorization to implement a Self-Insurance Program for Storm Damage to its Transmission and Distribution (T&D) Lines and to Increase Annual Storm Damage Expense by Florida Power Corporation, Order No. PSC-94-0852-FOF-EI, Docket Nos. 940621-EI, 930867-EI, 1994 Fla. PUC LEXIS 867, *2-3 (July 13, 1994); (Tr. Vol. 5, p. 481, L. 16-25, p. 482, L. 1-3).

2. PEF's Study was Accepted and Approved by the Commission, and PEF has Applied and Followed its Study for 10 Years, Without Objection.

As we have described, PEF was required to file the Study to support PEF's self-insurance program for T&D storm damage. The Commission held open the self-insurance docket until it received and reviewed the Study, and only then, did the Commission set the accrual to the reserve based on the Study at $6 million a year. Order No. PSC-94-0852-FOF-EI, at *2-3. The Commission had to be aware of the types of costs that were going to be charged to the reserve for collection by the Company when it accepted the accrual amount in the Study. That accrual was partially determined by the types of costs charged to the reserve; to determine the level of damages expected from a non-catastrophic storm one had to know what costs would be incurred to correct the damage. (Tr. Vol. 5, p. 481, L. 16-25, p. 482, L. 1-3). After setting the accrual to the Company's reserve at the amount set forth in the Company's Study, the Commission closed

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PEF's petition to implement a self-insurance program was filed September 1, 1993, one month before FPL's Study was filed with the Commission on October 1, 1993. (Tr. Vol. 4, p. 411, L. 22-25); PEF Self-Insurance Order, at *1; Ex. 43.

that docket and the self-insurance docket it had held open until it received the Company's Study. Order No. PSC-94-0852-FOF-EI, at *3.

Under the circumstances, the Company reasonably concluded that its Study was accepted and approved by the Commission. (Tr. Vol. 5, p. 482, L. 4-6). When PEF submitted the Study, the Commission accepted it and did not question any part of the Study. The Commission did not find the Company's answers to the questions the Commission required PEF to answer to be deficient in any way, and the Commission did not reject the Study. (Tr. Vol. 5, p. 481, L. 10-15). And, of course, the Commission had set the Company's accrual at the exact amount contained in the Study. Even OPC's expert, Mr. Majoros, reached the same conclusion. He explained that the "Commission, I guess, accepted the plan but did not object to anything in the plan and then closed the record." (Tr. Vol. 7, p. 710, L. 21-23).[14]

PEF found further support for its conclusion that the Commission had approved PEF's Study in the Commission's subsequent orders addressing FPL's Study. These were significant to PEF because the Commission required PEF to prepare a "similar" Study to the one FPL had prepared and filed with the Commission. In February, 1995, the Commission explained that it had "required FPL to submit a study detailing the appropriate amount that should be annually accrued to the reserve and the costs it intends to charge to the Storm Fund." Order No. PSC-95-0264-FOF-EI, p. 2. In approving FPL's Study, the Commission stated:

> FPL's study provided sufficient analysis to indicate the appropriate annual amount that should be contributed to the storm damage reserve fund at this time. In addition, the study addressed the issues raised in the [1993 FPL self-insurance] order concerning the types of expenses that would be charged to the reserve. However, we have the authority to review any expenses charged to the reserve for reasonableness and prudence. FPL stated that it would use the actual restoration cost approach for determining the appropriate amounts to be charged to the reserve. This methodology is consistent with

[14] In point of fact, Mr. Majoros conceded he considered "striking that paragraph in my testimony" where he cited Commission orders to argue, erroneously as he now admits, that the Commission had not approved of an accounting methodology for PEF's storm-related costs. (Tr. Vol. 7, p. 711, L. 3-4).

the manner in which replacement cost insurance works.

Id. at p. 4. Later that same year, the Commission stated in another order that it had required FPL to "submit a study detailing what it believed to be the appropriate amount that should be accrued annually to the reserve and what costs it intended to charge to the storm fund," and that the Commission had "found the storm damage study submitted by FPL to be adequate." Order No. PSC-95-1588-FOF-EI, p. 1, (Dec. 27, 1995).

In 1998, the Commission again ruled upon an FPL request to increase the annual accrual to its Reserve. Order No. PSC-98-0953-FOF-EI, p. 2, (July 14, 1998). The Commission noted again that it had previously approved FPL's Study, and, "[b]ased upon the study," had authorized a prior increase in FPL's accrual amount. Id. at p. 2. The Commission denied FPL's request to increase the accrual further, however, based upon its view that the then-current accrual amount should be sufficient to cover most storms. In capping the accrual at then-current levels, the Commission assured FPL that "the costs of storm damage incurred over and above the balance in the reserve and the costs of the use of the lines of credit [to finance out-of-pocket storm costs] would still have to be recovered from the ratepayers." Id. at p. 5. In this regard, the Commission stressed that, "In the event FPL experiences catastrophic losses, it is not unreasonable or anticipated that the reserve could reach a negative balance. . . . In cases of catastrophic loss, FPL continues to be able to petition the Commission for emergency relief, as reflected in Order No. PSC-95-1588-FOF-EI." Id.

Finally, in discussing the state of FPL's Reserve, the Commission recognized the fact that the determination of the amount then in the Reserve, and how long it should take for the Reserve to reach the targeted amount, was based upon a "calculation [that] includes a reduction to the reserve of $14.5 million in charges associated with the 1998 'Groundhog Day' storm." Id., p. 4.

FPL, of course, was then administering the Reserve in the manner described in its Commission-approved Study. Despite the fact that the Commission was explicitly considering the adequacy of the Reserve and making decisions about the accrual to the Reserve based upon FPL's implementation of its 1993 Study, the Commission voiced absolutely no objection to FPL's use of funds in the Reserve in the manner prescribed in the 1993 FPL Study. To the contrary, the Commission specifically noted that it had previously found that the FPL Study was acceptable.

In the wake of these Orders, the Company applied and consistently followed its Study, accounting for storm-related costs against the reserve using the actual restoration cost methodology, for nine hurricanes or major storms over the next ten years. (Tr. Vol. 5, p. 484, L. 3-15). At no time was any question raised about the Company's accounting for storm-related costs to the reserve despite the notorious facts that hurricanes had occurred and the Company had incurred costs in restoring electric service following the storms. (Tr. Vol. 5, p. 484, L. 13-25, p. 485, L. 1-4). Indeed, the Company reasonably believed it was inappropriate for the Company to change its accounting method for charging storm-related costs to the reserve from what PEF had told the Commission it planned to do in the Study without petitioning the Commission for a deviation from its Order. (Tr. Vol. 5, p. 485, L. 5-17).

Of course, any deviation from the Order approving PEF's Study must be applied prospectively. The Commission cannot fairly require PEF to follow a different method of accounting for its storm-related costs to be charged to the reserve and recovered from customers after PEF has already accounted for its storm-related costs for the 2004 hurricanes consistent with its Study. Such after-the-fact changes in rules or procedures are unfair and improper retroactive ratemaking. In re: Resolution by City of Plant City for extended areas service between Plant City and Tampa, Order No. 18626, Docket Nos. 850152-TL, 861383-TL, 1988

Fla. PUC LEXIS 214, *11 (Jan. 4, 1988) (the Commission is not precluded "from considering and prospectively implementing a different policy in the furtherance of the public interest"); Southern Bell Telephone and Telegraph Co. v. Florida Public Service Comm., et. al., 453 So. 2d 780, 783-84 (Fla. 1984) (holding that Commission adjudication "must be given prospective effect only. To hold otherwise would violate the principle against retroactive ratemaking.").

3. The Study Explains the Company's Accounting for the Storm-Related Costs the Company Will Charge to the Storm Damage Reserve.

PEF's Study proposed a replacement or actual restoration cost approach to determine the storm-related costs charged to the reserve. Specifically, PEF's Study indicated that the costs of "actual repair activities and those activities directly associated with storm damage and restoration activities" would be charged to the reserve. (Tr. Vol. 3, p. 249, L. 9; Ex. 42, p. 9). PEF provided detailed examples of the types of direct costs that would be charged against the Storm Damage Reserve in the Study and in an exhibit to its Study. (Tr. Vol. 3, p. 250, L. 1-4; Ex. 42, pp. 9-10, ex. 3). PEF explained in its Study that this actual restoration cost approach was consistent with prior, third-party T&D storm damage insurance and current third-party insurance on other facilities. (Id.). The Study further explained the accounting assumptions and treatment for charging all of its direct storm-related costs to the reserve. (Id.).

The PEF Study is consistent with the earlier-filed FPL Study in the manner in which storm-related costs are initially accounted for and charged to the reserve.[15] Both Studies advocate the actual restoration cost approach, without adjustment, with respect to what costs should be charged to the reserve. FPL's Study is instructive to understanding the actual

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[15] The Companies differ only in their allocation of storm-related costs to capital expenditures after all storm-related costs have been collected under the actual restoration cost approach. (Ex. 42, p. 10, ex. 4; Ex. 43, Attachment 2, p. 1). This difference has no bearing on the Company's Petition because the parties have stipulated to PEF's approach with respect to the capitalization of storm-related costs. Prehearing Order, p. 3; Tr. Vol. 1, pp. 9-17.

restoration or replacement cost approach followed by PEF in its Study.

FPL defined the actual restoration cost approach "to be those direct and indirect costs which are incurred to safely restore customer service, or to return plant and equipment to its original operating condition." (Tr. Vol. 3, p. 250; Ex. 43, p. 8). The FPL Study explains that the actual restoration cost approach does not include all costs resulting from a storm. Costs that were an indirect result of the storm such as "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), ... costs associated with work which must be postponed due to the urgency of the storm restoration and accomplished after the restoration is completed (catch up work)", and "revenues lost" due to the storms, are excluded under the actual restoration cost approach. (Tr. Vol. 3, p. 251; Ex. 43, pp. 8-9). FPL noted however, that such costs were indirectly covered because no adjustment was made to actual restoration costs to remove costs "normally incurred during the restoration period." (Id). In this way, FPL further explained, the actual restoration cost approach for accounting for storm-related costs mirrored the way replacement cost insurance worked. (Id.).

PEF expressed its intent to apply the actual restoration cost approach in its Commission-approved Study and did apply it during the 2004 hurricanes, accounting for all direct, storm-related costs to be charged to the Storm Damage Reserve for recovery, consistent with the way the replacement cost insurance the self-insurance program was intended to replicate works.

4. PEF's Methodology for Accounting for its Storm-Related Costs in its Study Represents Sound Regulatory Policy.

The actual restoration or replacement cost approach is a sound regulatory policy for accounting for storm-related costs. The alternative is an incremental cost approach that should consider "[b]oth direct incremental and indirect incremental costs" if the approach is used. (Tr.

Vol. 3, p. 251, Ex. 43, p. 10). The advantages of the actual restoration cost approach over the incremental cost approach are evident in the Studies and the evidence adduced at the hearing. The actual restoration cost approach is simple to administer and it is fair. For these reasons, the actual restoration cost approach in PEF's Study that PEF used to account for its storm-related costs incurred due to the 2004 hurricanes is sound regulatory policy.

As PEF explained in its Study, "[t]he replacement cost method represents by far the simplest approach and will transition well with any changes made in the Company's current insurance program for all facilities." (Ex. 42, p. 9).[16] FPL likewise expressed in its Study that the replacement or actual restoration cost approach was "simple and more straightforward" than the incremental cost approach. (Ex. 43, p. 2). The problems with the incremental cost approach were explained in FPL's Study. FPL first explained the cost impacts that should be considered under an incremental cost approach if it is fairly administered:

> Recoverable incremental costs would exclude reasonably estimable and quantifiable costs that would be charged to expenses normally in the absence of a storm. We believe such charges to be straight time FPL employee payroll charged to the storm work order, appropriate loadings for pension, welfare, taxes and insurance applicable to the straight time payroll, and a representative level of normal Company vehicle use charges. If the incremental cost approach is to be used then all incremental costs should be considered, including backfill work, catch-up work and revenues lost by FPL as a result of the storm.

(Ex. 43, pp. 10-11). The FPL Study further explains that "[w]hile incremental cost can be calculated, it requires starting with actual restoration cost and making numerous adjustments

[16] OPC questioned whether there was any justification for PEF's Study other than the ease of transitioning back to third-party insurance if it became available on reasonable terms for T&D storm damage. (Tr. Vol. 3, p. 337, L. 14-24) OPC apparently suggests, without any supporting evidence, that will not happen and, therefore, the accounting method for storm costs identified in the Study and followed for over ten years should be abandoned. (Tr. Vol. 1, p. 37, L. 14-25). As Mr. Portuondo pointed out, however, the Study contains further grounds for the replacement cost approach, namely, that it is by far the easiest method to administer, which is certainly important during the massive and chaotic restoration efforts brought about by hurricanes. (Tr. Vol. 3, p. 336, L. 18-25, p. 337, L. 1-3; Vol. 5, p. 490, L. 5-20; Ex. 42, pp. 9-10). Moreover, the Company continues to maintain third-party storm damage insurance for other facilities, such as substations, and having a consistent accounting method with third-party insurance is still an important justification for the methodology in the Study. (Tr. Vol. 3, p. 338, L. 10-15).

which depend on estimates and allocations." (Id.). This renders the incremental cost approach unmanageable under the emergency conditions of a massive hurricane restoration effort.

As the FPL Study states, "the field accounting must remain simple and it would be unworkable to attempt to record only incremental costs to the storm work order. Furthermore, each storm can be expected to impact the Company in a unique way and the assumptions and the estimation and allocation techniques needed to calculate indirect incremental costs and non-incremental costs might need modification." (Id.). In contrast to the incremental cost approach, the FPL Study concluded that "the actual restoration cost approach as relatively simple and fair." (Id.).

The overwhelming evidence demonstrates that the actual restoration or replacement cost method PEF used to account for the storm-related costs incurred due to the 2004 hurricanes is, in fact, simple to administer and fair, just as the Studies described. By all accounts, as even OPC's expert, Mr. Majoros, agreed, the job of preparing for, responding to, and recovering from four hurricanes in 2004 was a massive undertaking, requiring thousands of PEF employees and outside workers unfamiliar with PEF's accounting methods focusing all of their efforts on restoring service as quickly and safely as possible. (Tr. Vol. 3, p. 290, L. 18-23; Vol. 6, p. 588, L. 1-15; Vol. 7, p. 716, L. 10-25). Mr. Portuondo and Mr. Wimberly explained that, under such extraordinary, emergency circumstances, the Company must have a simple and straightforward means of accounting for storm-related costs to ensure that all efforts are focused on the restoration of electric service. (Tr. Vol. 3, p. 290, L. 18-23; Vol. 5, p. 490, L. 5-20; Vol. 6, p. 588, L. 1-15). Again, Mr. Majoros agreed that a simple accounting method was necessary to account for storm-related costs in such a massive undertaking and that the approach followed by PEF satisfied that requirement. (Tr. Vol. 7, p. 716, L. 10-25).

Tellingly, there was no real dispute among the witnesses that PEF's approach for accounting for storm-related costs consistent with its Study for the 2004 hurricanes was, under the circumstances, also the most fair and most sound accounting methodology to follow. While intervenors inaccurately accused PEF of "double dipping" – or charging twice for the same work – Mr. Majoros, the expert OPC retained to review PEF's storm-related costs and determine if they were reasonable, flatly admitted they "overreached" in making this accusation. (Tr. Vol. 7, p. 705, L. 1-3).

Mr. Majoros questioned certain "accounting aspects" of PEF's storm-related costs, (Tr. Vol. 7, p. 705, L. 4-5), namely, he pursued a modified incremental approach. He recommended deductions from PEF's request for recovery of its storm-related costs of such charges as straight time PEF employee payroll expenses for PEF employees who were assigned to hurricane-related efforts while ignoring overtime and contract labor incurred by the Company for backfill and catch-up work and lost revenues. (Tr. Vol. 7, pp. 687-89, Ex. 36, p. 733, L. 17-23). In other words, Mr. Majoros' approach was classic "cherry picking;" indeed, he relied on reports of favorable budget variances just one month after the storms, in October 2004, (Tr. Vol. 7, p. 729, L. 3-6), while ignoring later activity by the Company that showed the Company was returning to work left undone due to the storm work and completing that work in subsequent months at a higher cost to the Company than budgeted. (Tr. Vol. 7, p. 731, L. 5-12).

Mr. Majoros' concession that his deduction for tree trimming expenses that were part of the Company's storm-related costs, which was based solely on a favorable variance to budget for tree trimming in October 2004, should "probably go to zero" proves this point. (Tr. Vol. 7, p. 731, L. 23-25, p. 732, L. 1-2). As the Company returned to work left undone because it was focused on storm preparation and restoration efforts in August and September 2004, and

completed that work in late 2004 and into 2005 at a higher cost than budgeted because of overtime and outside contractors, the Company was incurring incremental indirect costs as a result of the storm that even Mr. Majoros had to concede should be taken into account. (Id.).

The difficulty identified in PEF's and FPL's Studies with using an incremental approach to accurately account for storm-related cost impacts to the utilities was further demonstrated by Mr. Majoros and Ms. Brown, FIPUG's expert. Mr. Majoros' deductions were from actual, direct costs incurred by the Company, not the amounts included in PEF's budgets for those same costs if the budgeted employees or vehicles, for example, were assigned to storm work. (Tr. Vol. 6, pp. 545-48; Vol. 7, p. 725, L. 10-19). He further admitted that despite receiving everything he asked for, (Tr. Vol. 7, p. 720, L. 10-22),[17] he was unable to quantify his claims that the Company "made money off the hurricanes." (Tr. Vol. 7, p. 729, L. 7-10).

Ms. Brown explained why Mr. Majoros could not support his claim that the Company "made money off the hurricanes" when she admitted that it was impossible for the intervenors and PEF to use any approach other than the actual restoration cost approach to account for the storm-related costs:

> Commissioner Deason: On page 16 of your prefiled testimony, on lines 8 through 11, you provide some O&M costs and what the average monthly O&M costs were and how they dropped during the months of August and September and October. Is it your testimony that that deviation for those months is an indication of the amount of O&M costs that would have been incurred had it not been for the storms but, nevertheless, were allocated to cost recovery through the proposed clause?
>
> The Witness: I believe its an indication that costs were shifted, and it just proves out that the costs were shifted out of normal O&M and over into the storm damage account. <u>Putting your finger on the actual amount, I believe, is an insurmountable task that we don't have the evidence now, and I don't even believe that Progress Energy has the, has the knowledge of, of being able to tie down the exact numbers.</u>

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[17] Mr. Majoros backed off this admission in his deposition at the hearing but only as to the cost of removal and not as to any of the extraordinary O&M storm-related costs charged to the reserve. (Tr. Vol. 7, p. 719, L. 18-25, p. 720, L. 1-8).

Commissioner Deason: So you're not proposing an adjustment for that then?

The Witness: No. ...

(Tr. Vol. 7, p. 806, L. 16-25, p. 807, L. 1-17).[18] Ms. Brown, just like Mr. Majoros, ignores the indirect cost impacts to the Company under the incremental cost approach from added costs to accomplish backfill and catch-up work and lost revenues. But she readily agrees that accurately applying the incremental cost approach to account for the direct and indirect impacts to the utility to arrive at the costs it should recover for preparing for, responding to, and recovering from hurricanes is an "insurmountable task."

PEF and FPL, of course, knew the incremental cost approach presented "insurmountable" accounting problems when it prepared its Studies. That was one reason they both adopted the actual restoration or replacement cost approach to account for the storm-related O&M costs. (Ex. 42, pp. 9-10; Ex. 43, pp. 2, 8-9). PEF's witnesses further explained that a simple, straightforward accounting method like the actual restoration or replacement cost approach was absolutely necessary during the hurricanes. In Mr. Wimberly's words, for example, "[w]hen you're in the middle of a catastrophic event such as a hurricane, you don't need to be worried about what account number do I charge this to. You want your crews focused on restoration, getting customers back on as quickly as possible, and that's why the simple methodology was set up in the first place." (Tr. Vol. 6, p. 588, L. 1-15).

The Commission also should not assume that the customers will fare better under an incremental cost approach that attempts to take into account all direct and indirect cost impacts to the utility. The incremental cost approach may actually cost the customer <u>more</u> than the actual direct cost approach. FPL's estimate of the incremental cost approach for Hurricane Andrew

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[18] Ms. Brown went on to assert that the Company's storm-related costs should be reduced to the point where the Company's earnings had fallen to a 10% ROE in 2004. The fallacy of this position is addressed below.

was $299 million while its actual restoration cost estimate was $270 million, or $29 million lower than the incremental cost approach. (Ex. 43, pp. 8-9, Attachment 1). The intervenors' experts, of course, did not attempt to determine the appropriate storm-related costs under a true incremental cost approach, because it is an "insurmountable task," so there are no assurances from them that even if the approach could be implemented that the customers would fare better than the "simple and straightforward" actual restoration or replacement cost approach PEF employed.

There were, of course, indirect costs to PEF from the 2004 hurricanes that PEF does not seek to recover from their customers. PEF suffered lost revenues during the four hurricanes that it otherwise would have received, but it does not seek to recover them. (Tr. Vol. 5, p. 475, L. 4-20). Likewise, PEF has incurred and continues to incur additional costs from overtime and contract labor for backfill and catch-up work – estimated to be over $25 million for the catch-up work alone – but PEF does not seek to recover these additional, indirect costs from its customers. (Tr. Vol. 4, p. 392, L. 13-25; Vol. 6, pp. 540-43, p. 581, L. 21-25, p. 582, L. 1-4). These indirect costs are real, they adversely impact the Company, and there may be other adverse impacts from the hurricanes now or down the road that the Company may uncover, as Mr. Lyash explained, (Tr. Vol. 2, p. 90, L. 7-13), that altogether may make the incremental cost approach less advantageous to the customer than the actual restoration cost approach.

The actual restoration cost approach does not require such complex accounting assumptions and calculations. As a result, this methodology that PEF laid out in its Study was sound regulatory policy then and, based on the evidence presented, it remains sound regulatory for the circumstances the Company faced during the 2004 hurricanes. PEF seeks to recover only its actual, direct O&M costs incurred during the four hurricanes, and PEF is entitled to recover

those costs, estimated to be $251.9 million subject to true up, from its customers.

5. PEF has Appropriately Accounted for its Storm-Related Costs Consistent with its Commission-Approved Study and is Entitled to Recover its Actual, Direct Costs Incurred.

In sum, no one in this case challenges the reasonableness or prudence of the work done by PEF to prepare for, respond to, and recover from the 2004 hurricanes. (Tr. Vol. 6, p. 616, L. 17-25, p. 617, L. 1-4; Vol. 7, p. 792, L. 2-10). In point of fact, in customer service hearing after customer service hearing PEF was praised by its customers for its efforts to keep the power on and restore it quickly when it was knocked out under the most trying of emergency circumstances. No one further disputes the reasonableness or prudence of the costs that PEF incurred during those hurricanes. (Id.). In fact, many customers in the customer service hearings acknowledged that quality service under such conditions comes at a price and were more than willing to pay for it. PEF has further followed the accounting methodology that was set forth in its Commission-approved Study in connection with the 2004 hurricanes and that methodology is indisputably the most reasonable and fair to the customers and the Company under the circumstances of a catastrophic series of hurricanes and the ensuing restoration efforts. PEF is entitled to recover all of its storm-related O&M costs to be charged against the reserve without adjustment. The reasonable and prudent storm-related costs are, therefore, $251.9 million subject to true-up.

C. The Intervenors' Arguments in Opposition to PEF's Petition are Without Merit.

The Intervenors' arguments in opposition to PEF's Petition are three-fold: (1) the Company's Settlement precludes PEF from recovering storm-related costs until its earnings are reduced to a 10% ROE; (2) this reduction is, nevertheless, "fair," even if the Company's Settlement does not require the reduction, because PEF should "share" the costs with its

customers by reducing its earnings to what they claim is a "reasonable" return that allegedly compensates PEF's investors for assuming the risks, including potential hurricane damage, of doing business in Florida; and (3) PEF's request should be reduced to exclude expenses included in the Company's storm-related costs that they allege are recovered through base rates. The evidence at the hearing demonstrated that all of these arguments are without merit, as illustrated below, and that PEF's Petition should be granted.

1. The Company's Settlement Neither Bars PEF's Petition Nor Requires PEF to Reduce its Earnings Before PEF's Petition can be Granted.

The Company's Settlement, of course, settled a base rate proceeding. The Settlement provides that PEF "will not petition for an increase in its base rates and charges, ... that would take effect prior to December 31, 2005, except as provided in Section 7."[19] Section 7 further allows PEF to petition the Commission "to amend its base rates" if its retail base earnings fall below a 10% ROE. Id. at p. 16.[20] It is undisputed that PEF's Petition does not involve an increase in base rates and charges and that the storm-related costs that PEF seeks to recover under a Storm Cost Recovery Clause were not and cannot be included in a base rate proceeding.

PEF's witnesses explained that the costs of severe storms like the 2004 hurricanes are too volatile, irregular in their occurrence, and unpredictable to be addressed in base rates. (Tr. Vol. 3, pp. 227-30, p. 289, L. 11-16). Rather, base rates are set to defray other, normal recurring costs

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[19] In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light, Order No. PSC-02-0655-AS-EI, Dockets Nos. 000824-EI and 020001-EI, p. 15 (May 14, 2002).

[20] Because PEF appropriately seeks to recover its 2004 hurricane-related costs through a cost recovery clause, the intervenors may further rely on Section 12 of the Settlement, which provides in relevant part that PEF "will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates." PEF, however, is not seeking recovery under the Storm Cost Recovery Clause for any items, classified as capital or otherwise, that have been "traditionally and historically" recovered through base rates. As demonstrated by the evidence, the catastrophic hurricane-related costs that PEF seeks to recover under the Storm Cost Recovery Clause have never been contemplated as part of the Company's base rates.

of running the utility. After base rates are set, the utility may do better or worse in managing those other utility costs than anticipated and the utility's earnings will depend on how well the utility manages such normal, recurring costs of utility operation. (Tr. Vol. 3, p. 256, L. 19-21, pp. 257-9). Costs incurred to address catastrophic hurricanes are simply beyond the utility's ability to reasonably predict and control and, therefore, traditionally and historically, severe catastrophic events and their costs have not been addressed in base rates. (Id.; Tr. Vol. 3, pp. 227-230, p. 289, L. 11-16).

The Commission similarly recognized that costs from catastrophic storms were not covered by base rates when it established the self-insurance programs for PEF and FPL. The Commission provided for relief from catastrophic storms in the form of petitions for the recovery of costs in excess of the Storm Damage Reserve. E.g., PEF Self-Insurance Order, *8; FPL Self-Insurance Order, * 11. There was no reason for the Commission to permit petitions for the recovery of costs in excess of the reserve balance if the costs were included in the utilities' base rates. (Tr. Vol. 5, p. 494, L. 2-11).

Not one witness called by the intervenors disagreed. They all agreed, as they must, that the 2004 hurricanes and the costs incurred by PEF were unprecedented in nature and that the hurricane costs were volatile and unpredictable.[21] They all agreed further that the Company's base rates did <u>not</u> include the 2004 hurricane costs.[22] As FIPUG's expert, Ms. Brown put it, the Company's base rates "were not set to cover that level of cost." (Tr. Vol. 7, p. 805, L. 16-20). She also said the Company's storm-related costs could not be recovered in <u>future</u> base rates because they were volatile and non-recurring. (Tr. Vol. 7, p. 750, L. 18-21). In other words, she permits no recovery inside or outside base rates of the lion share of the Company's storm-related

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[21] Tr. Vol. 3, p. 289, L. 1-16; Vol. 6, p. 617, L. 22-25, p. 618, L. 1-6, p. 619, L. 5-14; Vol. 7, p. 705, L. 23-25, p. 706, L. 1-13; p. 804, L. 16-22, p. 805, L. 5-16; p. 844, L. 7-25.
[22] Tr. Vol. 6, p. 624, L. 9-22; Vol. 7, p. 805, L. 16-20; p. 845, L. 4-11.

costs. This result is a blatant disregard of the regulatory compact.

Because catastrophic hurricane costs like the ones PEF seeks to recover under its Petition have not been traditionally or historically included in base rates, it follows that the Company's Settlement, which settled a base rate proceeding, is inapplicable to the Company's Petition for recovery of its 2004 hurricane costs.[23] It is simply untenable and unfair for intervenors to suggest that PEF must use its base rate revenues to absorb all or part of the costs of volatile, non-recurring expenses that base rates were never intended to recover in the first place.

2. The Intervenors' Argument that PEF's Recovery of Its 2004 Hurricane-Related Costs Should be Reduced so that the Company's Earnings are at a 10% ROE is Improper, Unreasonable, and Unfair.

The intervenors contend that the Company should "share" the 2004 hurricane-related costs with its customers by applying its earnings toward those costs, suggesting the 10% ROE figure in the Company's Settlement is, in any event, a "fair" and "reasonable" way to allocate the Company's storm-related costs. (E.g., Tr. Vol. 7, p. 777, L. 13-23). This argument deceptively undermines the very Settlement that intervenors purport to rely on and, more fundamentally, undermines the regulatory compact and, therefore, is neither "fair" nor "reasonable" and should be rejected.

To begin with, FIPUG proposes that PEF should incur storm-related costs by limiting PEF's 2004 return to only a 10% return on equity, claiming this is "fair" because it is "based on

[23] Intervenors may rely on FPL's stipulation and settlement of its base rate proceeding because FPL expressly provided in its settlement that it may petition for recovery of prudently incurred storm damage costs in the event there were insufficient funds in its Storm Damage Reserve or through insurance. In re: Review of the retail rates of Florida Power & Light Company, Order No. PSC-02-0501-AS-EI, Docket Nos. 001148-EI and 020001-EI, Attachment 1, ¶ 13, (April 11, 2002). FPL, however, had petitioned to increase its annual accrual to the reserve. Because this petition was withdrawn as part of its settlement, FPL wanted to ensure that no one would later question the prudence of its reserve to cover costs from the storms that were reasonably expected to occur. PEF, on the other hand, did not have an issue with the adequacy of its reserve for non-catastrophic events and, therefore, there was no reason for PEF to include similar language in its Settlement.

the level of risk that PEF accepted in the [Settlement]." (Id.). The other intervenors agreed, claiming that PEF agreed to accept a 10% ROE in the Settlement in the event unforeseen costs resulted in a reduction in the Company's return on equity. OPC's expert, Mr. Rothschild, termed this PEF's "safety net." (Tr. Vol. 6, p. 632, L. 17-19).

The intervenors' and their experts' construction of the Company's Settlement is demonstrably inaccurate. Rule 25-6.0143, F.A.C. governs the Company's Storm Damage Reserve. Subsection (4)(b) of that Rule requires that "each and every loss or cost which is covered by the account shall be charged to that account and shall not be charged directly to expenses. Charges shall be made to accumulated provision accounts regardless of the balance in those accounts." Rule 25-6.0143(4)(b), F.A.C. By Rule, then, the Company would have been precluded from expensing storm-related costs in 2004 to the point that the Company's return is limited to a 10% ROE without obtaining a waiver of the Rule by the Commission.

To illustrate, in Order No. PSC-95-0264-FOF-EI in FPL's self-insurance program docket, the Commission addressed a request by FPL to expense in 1994 storm-related costs incurred as a result of Tropical Storm Gordon. Order No. PSC-95-0264-FOF-EI, p. 5. The Commission reminded the utility that Rule 25-6.0143, F.A.C. required all such charges not covered by insurance to be made to the reserve account and explained that FPL was "effectively requesting a waiver of this rule in order to expense the storm damage costs related to Tropical Storm Gordon." Id.

No request for a waiver of Rule 25-6.0143, F.A.C. was made in the Company's Settlement. In fact, intervenors experts were either unaware of this rule or they simply chose to ignore it when they advocated that the Company expense its storm-related costs in 2004 to reduce its earnings to a 10% ROE. (Tr. Vol. 6, p. 626, L. 15-25, p. 627, L. 1-19; Vol. 7, p. 803,

L. 5-23).

The Commission did not waive Rule 25-6.0143(4)(b), F.A.C. when it approved the Company's Settlement. See Order No. PSC-02-0655-AS-EI. Absent a waiver of this rule, the Commission and the parties are bound to follow it when construing the Company's Settlement. The intervenors' argument that the Commission should require PEF to expense its storm-related costs down to a 10% ROE is inconsistent with Rule 25-6.0143(4)(b), F.A.C. and must be rejected.

Second, the Settlement resolved a base rate proceeding, and the Company's Petition has nothing to do with a base rate proceeding. Base rates are not intended to cover the extraordinary costs of catastrophic hurricanes. (Tr. Vol. 3, pp. 318-319). The return on equity for the Company that is set in a base rate proceeding, therefore, does not include having to bear the risk of losses attributable to catastrophic hurricanes. If the utility's investors were to assume the risk of a potential loss in excess of $200 million for utility storm-related costs from catastrophic storms in any one year their expectation of a return on equity would be significantly greater. (Id. at p. 319).

Even though OPC's expert, Mr. Rothschild, argued that the Company's investors were compensated for the risk of the Company's storm-related costs, his argument rings hollow when he, nevertheless, agrees that hurricanes are a natural phenomena that reoccur in unpredictable ways, that hurricane costs are unpredictable and volatile, and that he found "it hard to believe" the base rates were set to cover four hurricanes hitting in 2004.[24] In fact, every intervenor witness agreed that hurricane-related costs are volatile and unpredictable and that the Company's

[24] Tr. Vol. 6, p. 617, L. 20-25, p. 618, L. 1-6, p. 619, L. 5-14, p. 624, L. 6-22.

base rates did not contemplate such costs.[25] As a result, PEF's investors simply did not accept the business risks of catastrophic hurricanes when they invested in the utility, even though the Company does business in Florida.

The intervenors' contention that PEF should share in the storm-related costs by reducing its earnings to a 10% ROE in 2004 is also inconsistent with the intervenors' own obligations under the Settlement. "The Stipulating Parties other than" PEF agreed in paragraph 4 of the Settlement that they would "neither seek nor support any additional reduction in [PEF's] base rates and charges" during the term of the Settlement. As we have discussed, PEF's current base rates – and the Settlement Agreement – were not established to cover the kind of extraordinary, non-recurring expenses PEF experienced last year. In urging that PEF should be forced to divert its base rates and revenues to cover these expenses, the intervenors are seeking an additional reduction in PEF's base rates in violation of the Settlement.

In effect, the intervenors are improperly seeking to rewrite the Settlement. All witnesses agreed that PEF was permitted to earn more than a 10% ROE under the Settlement. (Tr. Vol. 6, p. 629, L. 25, p. 630, L. 1-11; Vol. 7, p. 804, L. 4-7, p. 844, L. 3-6). In effect, the intervenors' witnesses agreed the 10% ROE referred to in the Settlement is not a cap on the Company's earnings although that is the way they are using it. In fact, there is no cap on PEF's earnings during the term of the Settlement. Rather, PEF agreed to share revenues with customers above certain threshold amounts and further provided customers a substantial rate reduction in the amount of $125 million a year, or a total of one-half a billion dollars over the term of the Settlement. (Tr. Vol. 3, pp. 261-62). The revenue sharing mechanism and the Company's substantial rate reduction are part of the consideration for not setting a midpoint ROE as a target

[25] Tr. Vol. 3, p. 289, L. 1-16; Vol. 7, p. 705, L. 23-25, p. 706, L. 1-13; p. 804, L. 16-22, p. 805, L. 5-16; p. 844, L. 7-25; p. 805, L. 16-20; p. 845, L. 4-11.

rate of return with a band of a permitted range of return around the midpoint, as is typically the case in a base rate proceeding, that the parties agreed to in the Settlement. As a result, the Company substantially reduced its base rates and agreed to share revenues at a certain level with customers in return for the opportunity to increase its revenues from more efficient utility operations. To now suggest, as intervenors do, that PEF should be required to use its earnings during the term of the rate case Settlement to "share" in the storm-related costs unfairly alters the risks and incentives set forth in the Settlement that the parties agreed to accept and writes into the Settlement a cap on earnings that the parties never agreed to and that nowhere exists in the agreement.

The Commission's orders do not require the Commission to take into account a utility's earnings to reduce the utility's recovery of storm-related costs as the intervenors argue. The Commission's orders foreclose this argument. In establishing and implementing the self-insurance programs for T&D storm coverage, the Commission has consistently invited the utilities to petition the Commission for recovery of storm costs in excess of the Reserve. (See PEF Self-Insurance Order, FPL Self-Insurance Order, and Orders cited in note 8). In 1998, for example, the Commission expressly stated that "the cost of storm damage incurred over and above the balance in the reserve ... will still have to be recovered from ratepayers." Order No. PSC-98-0953, Docket No. 971237, pp. 4-5. If the intervenors were correct, the Commission would have instructed the utilities to petition only for relief from costs that would cause the utilities' earnings to reach 100 basis points below its authorized midpoint ROE.

Typically, the Commission sets a midpoint ROE and then uses a band of a range of earnings around the midpoint, usually 50 basis points on each side of the midpoint, to determine if the utility is over- or under-earning. (Tr. Vol. 3, p. 261, L. 14-18). As Ms. Brown frankly

admitted, the intervenors proposed that PEF's earnings should be used to pay for the storm-related costs until PEF's 2004 earnings had reached a 10% ROE "as a reasonable bottom line of earnings." (Tr. Vol. 7, p. 803, L. 5-8). The intervenors' proposal to use the 10% ROE floor in the Settlement as the cap on PEF's earnings in 2004 is contrary to Commission practice. The intervenor witnesses were not able to identify any Commission precedent to support the argument that PEF should incur storm-related costs by pushing PEF to the bottom of its permissible earnings level. (E.g., Tr. Vol. 7, p. 803, L. 24-25, p. 804, L. 1-3; p. 846, L. 11-19).

It bears emphasis that the 10% ROE was put in the Settlement for PEF's benefit. (Tr. Vol. 5, p. 494, L. 23-25, p. 495, L. 1-20). In the event PEF's earnings fell to this level, PEF was permitted to seek an increase in its base rates, indicating that the parties recognized this was the point of economic hardship to the Company. It is hardly "fair" or consistent with sound regulatory policy to reduce PEF's earnings to the "bottom line" when the evidence demonstrates that PEF's performance during the 2004 hurricanes was everything the Commission and customers should want a utility to do and more. The customers certainly agreed during the customer service hearings, and even some of the intervenors praised PEF's performance. Under the circumstances, PEF should be rewarded, not penalized, for the extraordinary efforts undertaken during hurricanes to restore electric service to customers as quickly as possible to minimize their loss and inconvenience.

Mr. Rothschild's attempt to establish a reasonable ROE in a prior and current year obviously has no bearing on PEF's Petition. He is trying to turn an issue of coverage under the Company's self-insurance program into a rate case issue, although even in a rate case the ROE is set prospectively, not retrospectively. (Tr. Vol. 6, p. 620, L. 1-4).[26] As Mr. Portuondo

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[26] Even if Mr. Rothschild's opinion regarding a reasonable, current ROE for the Company had some bearing on PEF's Petition, which it does not, his opinion is simply not credibly supported by the

explained, in response to hypothetical questions where a utility's earnings were theoretically as high as a 16% or 17% ROE while at the same time incurring catastrophic hurricane costs, the Commission can call the utility in for a rate case proceeding to address questions regarding the utility's earnings on a prospective basis. (Tr. Vol. 3, pp. 309-311). On the other hand, volatile, non-recurring, unpredictable costs, such as those incurred from catastrophic hurricanes, have been appropriately addressed under a cost recovery clause. (Tr. Vol. 3, p. 306, L. 10-19). Further, the matter of the Company's rate of return for 2004 and 2005, as well as all other base rate matters, is, of course, resolved definitively in the Settlement. Indeed, before the hurricanes, the Company was targeting a 13% ROE and had every right to do so under the Settlement. (Tr.

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evidence. He concedes that a discounted cash flow analysis is the most commonly used method of determining the cost of equity but he admits he did not do one to arrive at his opinion of a reasonable ROE in this proceeding. (Tr. Vol. 6, p. 630, L. 20-25, p. 631, L. 1-21). His explanation for not doing a discounted cash flow analysis is, first, that the 10% was "already established" by the stipulation without any explanation why the mere inclusion of a 10% ROE in the stipulation made it the reasonable ROE when he conceded PEF could earn more than a 10% ROE under the stipulation and, therefore, there were any number of permissible and thus reasonable ROEs for PEF under the stipulation. (Id.). He followed this explanation by saying that he didn't want to "spend my client's money" to make people go through "an extremely boring part of the ratemaking process" when, in his words, "I don't think it was needed." (Id.). In other words, the Commission should just take his word for it that 10% is a reasonable ROE, without having done any of the customary analysis.

Possibly recognizing that his opinion was unsupported by any reasonable and customary analysis, Mr. Rothschild did rely on other material that is equally incredible. First, he selected the actual earned returns for twenty-three companies in 2004 but nowhere included the allowed returns for those utilities. (Tr. Vol. 6, p. 632, L. 21-25, p. 633, L. 1-2). Next, he relied on a Business Week article that commented on but did not provide the complete analysis of the expected returns over 75 years in the stock market performed by the Social Security Administration. (Tr. Vol. 6, p. 633, L. 3-11; Comp. Ex. 53). This was not Mr. Rothschild's analysis, he did not assist in preparing it, and he never saw it or talked to the person who performed it. (Tr. Vol. 6, p. 634, L. 7-16). In fact, the author of the article questioned the reliability of the analysis for projecting future changes in the market. (Tr. Vol. 6, p. 635, L. 1-18). Finally, Mr. Rothschild relied on a few orders where utilities had been awarded ROEs less than 10% that he recalled "off the top of his head." (Tr. Vol. p. 638, L. 2-15). He admitted he had not done a complete survey of utility rate proceedings and, therefore, cannot claim that the orders he selected are representative of the ROE's awarded utilities. (Id.). Tellingly, the ones he recalled "off the top of his head" were all distribution only or transmission and distribution only companies, not fully integrated companies with generation as well like PEF, and the regulators in those orders specifically noted that those companies had a lower risk profile than a utility with generation in addition to transmission and distribution. (Tr. Vol. 6, p. 638, L. 19-23, p. 643, L. 1-11, p. 644, L. 4-16).

Vol. 3, p. 264, L. 21-22). In addition, the Company had received revenues in an amount sufficient to trigger the revenue sharing mechanism under the Settlement so the Company's customers were benefiting too. (Tr. Vol. 3, p. 264, L. 23, p. 265, L. 1-2). This is exactly the way the Settlement was intended to work.

3. PEF's Hurricane-Related Costs Are Reasonable and Prudent and Should Not be Adjusted.

As discussed above, the intervenors do not dispute the reasonable or prudence of PEF's hurricane preparation and restoration efforts or the costs incurred, nor do they dispute the bulk of the charges against the reserve for the costs incurred during the 2004 hurricanes. Rather, the intervenors contend that certain costs incurred to prepare for and respond to the 2004 hurricanes should not be charged to the reserve and collected from customers because, in their view, these particular costs are already covered in the Company's budgets for T&D work and, therefore, paid for in base rates. They argue the Company would be "paid twice" if the Company recovered such costs from customers under the Storm Cost Recovery Clause. (E.g., Tr. Vol. 7, p. 698, L. 2-7). They assert that the Company should recover from customers only its "incremental" costs incurred as a result of the 2004 hurricanes. (E.g., Tr. Vol. 7, p. 672, L. 11-14).

The intervenors' arguments reflect a fundamental misunderstanding regarding the work contemplated in the Company's T&D budgets compared to the work undertaken in response to the 2004 hurricanes. The Company's budgeted work to maintain and improve the T&D systems did not go away. (Tr. Vol. 2, p. 103, L. 6-11; Vol. 6, p. 565, L. 4-11). It remains to be done and is being done by the Company, often at a premium price to what was budgeted. (Tr. Vol. 2, p. 105, L. 6-12; Vol. 6, pp. 540-43, p. 568, L. 9-17). This occurs because the hurricane restoration work is different from the nature and extent of the work undertaken by the Company on a regular basis to improve and maintain its T&D systems. (Tr. Vol. 2, p. 156, L. 12-24; p. 569, L. 2-18).

The work required to prepare for and respond to the hurricanes simply did not displace or eliminate the Company's budgeted maintenance and capital programs for its T&D systems.[27]

PEF's witnesses explained and provided illustrations of the differences between hurricane restoration work and further explained why the Company's "normal," budgeted work was not eliminated by the hurricane restoration work. To begin with, the Company's focus during and immediately following the hurricanes is on restoring electric service as quickly and safely as possible.[28] The focus on quick and safe restoration of service during the emergency conditions surrounding the hurricanes, and not the Company's budgets under normal conditions, drives all the work that the Company does in the restoration process.

Hurricane damage is unique and is not representative of what the Company normally sees during maintenance work. For example, the hurricanes were not selective. Both new and older poles and equipment were knocked down or damaged during the hurricanes. In fact, new poles and equipment installed after one storm were knocked down and had to be replaced during subsequent hurricanes. (Tr. Vol. 2, p. 95, L. 13-25; p. 151, L. 13-22). Further, the restoration work was evident. For example, street lights, lightning arrestors, and other such equipment was not out or not functioning as might be expected under normal maintenance programs. They were broken or damaged as a result of the hurricanes.[29] The Company was clear that it had identified only the work required to repair or replace equipment damaged by the hurricanes in its storm-related costs. (Tr. Vol. 2, p. 154, L. 12-19).

Two examples provided at the hearing illustrate the fact that the Company's normal maintenance and capital programs were not eliminated or displaced by the hurricane restoration work. Intervenors and Staff focused on the fact that only 329 out of the thousands of poles

[27] Tr. Vol. 2, p. 95, L. 13-25, p. 104, L. 4-16; Vol. 6, pp. 540-43.
[28] Tr. Vol. 2, p. 156, L. 25, p. 157, L. 1-14; p. 197, L. 1-16; Vol. 6, p. 540, L. 19-23, p. 541, L. 1-8.
[29] Tr. Vol. 2, p. 156, L. 12-14; Vol. 6, p. 544, L. 6-23, p. 545, L. 1-7.

replaced during the hurricanes were scheduled to be replaced in 2005 and 2006 by the Company. (Ex. 6, Bates Nos. 95-96). Yet, as Mr. McDonald and others explained, the budgeted amounts for replacement of these 329 poles will be spent to replace other poles on PEF's system, i.e. "the next level on our prioritization list for pole maintenance," under the Company's pole inspection and replacement program.[30] PEF's budgets are based on maintenance and capital programs across its T&D systems, and those programs will still be fully implemented despite the hurricane restoration work, as this example regarding the pole inspection and replacement program shows.

Second, questions regarding the Company's tree-trimming program also illustrate how the hurricane restoration work differs from the Company's normal budgeted work and does not eliminate it. As Mr. McDonald and Mr. Wimberly explained, restoration trimming is different from the Company's budgeted production trimming. It is "spot trimming," identifying "those individual trees/limbs that are interacting with our facilities and hindering our ability to restore service," and thus it is different from budgeted production trimming, which focuses on trimming back growth to a three-year growth cycle along the entire line.[31] The budgeted production trimming must still be done even after the spot trimming that occurs during hurricane restoration, and the spot trimming work has no impact on the budget because it is different work. Production work is paid on a per-mile not a per-tree basis. (Tr. Vol. 6, p. 586, L. 20-22). Indeed, the evidence bore this out, as even OPC's expert agreed the favorable variance to budget for tree trimming immediately following the hurricanes had changed over time as the Company returned to and accelerated the budgeted production tree-trimming left undone during the storms. (Tr. Vol. 6, p. 587, L. 4-7).

This evidence was undisputed by the intervenors. Their arguments that the hurricanes

[30] Tr. Vol. 2, p. 153, L. 1-7, p. 155, L. 24-25, p. 156, L. 1-11; Vol. 6, p. 587, L. 8-25.
[31] Tr. Vol. 2, p. 154, L. 20-25, p. 155, L. 1-17; Vol. 6, p. 585, L. 19-25, p. 586, L. 1-20.

had eliminated or displaced work that PEF otherwise would have done under its normal maintenance and capital programs were premised on unsupported assumptions that their experts were not even qualified to make. Their experts were accountants, not engineers, and further they had never worked for an electric utility and were unfamiliar with how PEF plans for and budgets for its capital and maintenance programs.[32] None of them identified any specific capital or maintenance program that was displaced or eliminated as a result of the hurricane restoration work. (Tr. Vol. 7, p. 723, L. 22-25; p. 797, L. 23-25, p. 798, L. 1-17). There simply is no credible evidence to show that the costs the Company incurred to prepare for, respond to, and recover from the 2004 hurricanes displaced or eliminated any costs under the Company's T&D budgets. Rather, the undisputed evidence is that the Company will incur the costs of doing the work identified in its capital and maintenance programs in its T&D budgets that are recovered in base rates. [33]

It is further undisputed that the Company will incur additional costs to complete the work that employees left behind when they were assigned to the hurricane restoration efforts. As PEF's Senior Vice President for Energy Delivery, Mr. Lyash, explained, the Company has "a substantial amount of corrective and preventative maintenance and the normal work of the electric utility business that we were unable to accomplish during the period of the storms which

[32] Tr. Vol. 7, p. 700, L. 12-14, p. 721, L. 20-25, p. 722, L. 1-11, p. 723, L. 12-21; p. 797, L. 17-22.
[33] The intervenors also want to cut off the recovery of legitimate storm-related costs as of an arbitrary date. OPC's guidelines call for the end of storm cost recovery when outside utility contractors are sent home and PEF returns to a "normal" schedule. (Tr. Vol. 7, p. 673, L. 41-44, p. 690, L. 1-4). OPC's own expert, Mr. Majoros, agreed, however, that the goal of the hurricane restoration process is to get service restored as quickly and as safely as possible, and that means the Company would not fix everything that needs to be fixed in order to get the poles and lines back up to restore service. (Tr. Vol. 7, p. 726, L. 8-16). As a result, he further agreed that there would be facilities and equipment that were damaged by the hurricanes that must be fixed after restoration and that the Company must make sure all of its equipment is working properly. (Id. at L. 17-25). Moreover, the Company's employees have not yet returned to a normal work schedule. (Tr. Vol. p. 104, L. 24-25, p. 105, L. 1-5; p. 188, L. 11-25). Based on the undisputed evidence, OPC's "cut-off" guideline clearly is an arbitrary one and should be rejected.

we must carry forward and accomplish anyway, and as I said, often at a premium price." (Tr. Vol. 2, p. 83, L. 9-16). Mr. Wimberly provided the Company's best estimate that this "make-up" or "catch-up" work will cost the Company an additional amount in excess of $25 million.[34] The Company is not seeking to recover this additional cost to the Company for "catch-up" work from its customers under the Storm Cost Recovery Clause, (Tr. Vol. 6, p. 582, L. 1-14), and, therefore, the Company did not provide supporting documentation with its testimony, although it did provide whatever was asked of it regarding the "catch-up" work in discovery. (Tr. Vol. 6, p. 567, L. 3-9). The evidence of what the "catch-up" work will cost the Company was provided to rebut the intervenors' unsubstantiated claims that the Company's budgeted work had been eliminated by the storms and that the Company would be "paid twice" if it recovered its direct costs incurred to prepare for and respond to the 2004 hurricanes.

In charging all direct costs incurred to prepare for, respond to, and recover from the 2004 hurricanes to the reserve, the Company was applying the same accounting methodology for storm-related costs contained in its Study that was approved by the Commission and that PEF applied for the last ten years to other severe storms and hurricanes. (Tr. Vol. 5, p. 482, L. 4-6, p. 484, L. 3-15). Intervenors and Staff simply ignore this Study. Staff's auditor was directed in the audit plan to deduct all costs for the time of employees and vehicles devoted to the restoration efforts that corresponded to the time under a normal work day had there been no hurricanes before she even commenced the audit of PEF's storm-related costs.[35] She never read the Study, although she agreed she should have, and further stated that the Study would not have made a difference because she was not going to change anything in her audit anyway.[36] Intervenors did not provide the Study to their experts, and they did not take the Study into account in preparing

[34] Tr. Vol. 6, pp. 540-43, p. 566, L. 14-25, p. 567, L. 1-2; p. 573, L. 3-25, p. 574, L. 1-19.
[35] Ex. 51, p. 12, L. 12-25, p. 18, L. 1-7, p. 20, L. 13-25, p. 21, L. 1-5.
[36] Ex 51., p. 33, L. 10-16, p. 36, L. 17-25, p. 37, L. 1-3, p. 41, L. 16-25, p. 42, L. 1-6.

their testimony. (Tr. Vol. 7, p. 711, L. 9-22; p. 797, L. 7-16). Intervenors and Staff, therefore, have no response to the accounting methodology employed in the Study. They simply act as if it does not exist.

But the Study, of course, does exist. It represents the long-standing Company practice of following the sound regulatory policy the Commission approved for dealing with catastrophic storms after the last catastrophic hurricane hit the state in 1992. The actual restoration or replacement cost approach approved in the Study and applied by the Company with respect to the 2004 hurricanes replicates third-party T&D insurance coverage the self-insurance program was intended to replicate and replace. (Ex. 42, pp. 9-10; Tr. Vol. 3, p. 250, L. 1-4).

The accounting method in the Study also works while the "incremental" approach advocated by the intervenors and, apparently, Staff does not. In fact, intervenors and Staff are not really applying a true "incremental" approach because they ignore the incremental direct and indirect costs from the hurricanes that adversely impact the Company. They fail to acknowledge the Company's lost revenues and additional costs to complete backfill and catch-up work, but they agree these cost impacts do or may exist.[37] They simply want to deduct costs that correspond to budgeted time periods without any regard to whether the adjustments they want to make are offset by other costs to the Company, as the Company demonstrated.[38] Indeed, OPC's expert Mr. Majoros agreed that he was "overreaching" by claiming that PEF was "double-dipping" or charging twice for the same work. (Tr. Vol. 7, p. 705, L. 1-3).

The "incremental" approach advocated by intervenors and Staff is further impossible to administer. As both Mr. Portuondo and Mr. Wimberly explained, the Company's entire focus during the hurricanes is on the restoration of service as quickly and as safely as possible. This

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[37] Tr. Vol. 7, p. 724, L. 1-5; p. 800, L. 20-24, p. 801, L. 10-25.
[38] Tr. Vol. 7, pp. 687-89, Ex. 36, p. 729, L. 3-6, p. 733, L. 17-23.

requires a massive amount of manpower and other resources, and the coordination and direction of such resources in the field requires a simple accounting approach for storm-related costs.[39] Every impact and cost cannot be accounted for as it might under normal conditions during the emergency conditions of a hurricane restoration effort.[40] Indeed, even Ms. Brown agreed accounting for the adjustments that should be made under an incremental approach is an "insurmountable task" and that even PEF did not have the ability or knowledge to "tie down the exact numbers." (Tr. Vol. 7, p. 807, L. 3-6).

The restoration of service quickly and safely takes precedence in a hurricane. Having a "mini-rate case" every time there is a hurricane, therefore, is not sound regulatory policy.[41] Yet, that is exactly what the intervenors and Staff propose the Commission undertake in this proceeding when they want to review every type of cost incurred and the Company's revenues, of course, when they believe it is favorable for them to do so. The Commission, in accepting and approving PEF's Study in 1994, agreed that a "mini-rate case" for every hurricane is not sound regulatory policy, and it remains clear, based on the evidence, that it is not a sound regulatory

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[39] Tr. Vol. 3, p. 290, L. 18-23; Vol. 5, p. 490, L. 5-20; Vol. 6, p. 588, L. 1-15.
[40] Mr. Portuondo agreed that the Company's accounting for the cost of capital additions due to the hurricanes was a "form of" incremental approach but explained that the cost was estimated using Company methods for arriving at the costs under normal conditions. (Tr. Vol. 3, p. 339, L. 6-9; Vol. 4, p. 371, L. 17-25, p. 372, L. 1-2, p. 375, L. 14-24). Had these capital additions been made under normal operating conditions, the actual costs of each asset added to the system would have been booked by the Company. (Id.; Tr. Vol. 3, p. 327, L. 6-20). Under the emergency conditions of the four hurricanes, however, it was impossible to keep track of and account for the actual cost of each capital addition. PEF's accounting for its capital additions, therefore, did not reflect the actual incremental cost of the addition of each asset to PEF's system.

It bears emphasis here that the intervenors stipulated that the Company's method of accounting for the cost of installation of its capital additions during the hurricanes was appropriate. (Prehearing Order, p. 3). The intervenors, however, challenge the Company's calculation of the cost of removal component of its capital additions. The Company followed the same methodology to calculate the cost of removal that it followed to calculate the cost of installing the asset under normal operating conditions. (Tr. Vol. 5, p. 497, L. 13-25, p. 498, L. 1-23). There is no rational basis, then, for the intervenors' objection to the Company's calculation of the cost of removal component of the Company's capital costs for the assets added to the system due to the hurricanes.
[41] Tr. Vol. 2, p. 84, L. 15-23; Vol. 3, p. 278, L. 10-23, p. 279, L. 1-5.

policy in this event.

IV. Conclusion.

For all the foregoing reasons, and based on the evidence and arguments presented during the hearing, the Commission should grant PEF's Petition and establish a Storm Cost Recovery Clause to recover the reasonable and prudent storm-related O&M costs, including those for capital additions above the costs incurred under normal operating conditions, in the amount of $251.9 million subject to true-up.

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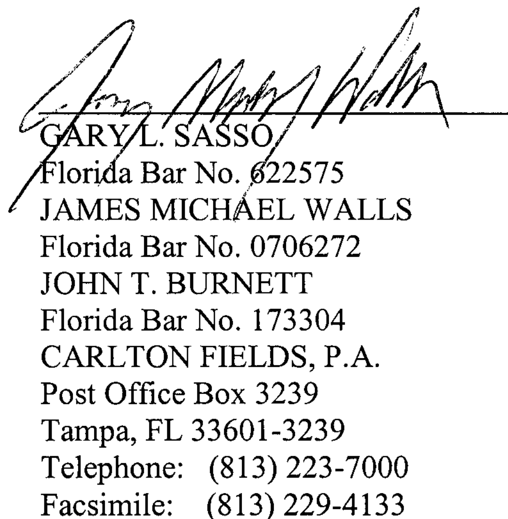

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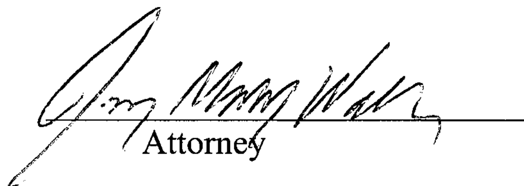

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