Kay Flynn

From: Mike Twomey [miketwomey@talstar.com]
Sent: Friday, April 28, 2006 5:01 PM
To: Filings@psc.state.fl.us
Cc: Rhonda Dulgar; Bryan Anderson; Natalie Smith; Patrick Bryan; R. Wade Litchfield; Charles Beck; Patricia A. Christensen; Joseph A. McGlothlin; John W. McWhirter, Jr.; Timothy J. Perry; chrise_kise@oag.state.fl.us; Jennifer Brubaker; Rosanne Gervasi; Cochran Keating; Capt. Damund Williams; Lt. Col. Karen White; Schef Wright
Subject: Re: Electronic Filing - Docket 060038-EI
Attachments: AARP Post hearing position in FPL storm case April 28, 2006 Final.doc

ORIGINAL

To All,

In checking my blind copy to myself just now, it appears in my haste to beat the clock
I sent the Clerk's Office and all of you a draft of AARP's position statement, not the
final. The document attached is the final of what I intended to send and is the document
served to those on the certificate of service.

I'd ask that the Clerk, and all of you, substitute the attachment for the file emailed late
Friday afternoon.

Thank you,

Mike Twomey

Mike Twomey wrote:

a. Person responsible for this electronic filing:

Mike Twomey, PO Box 5256, Tallahassee, Fl 32314-5256, 850-421-9530

b. Docket No. 060038-EI

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

CMP
COM 5
CTR
ECR
GCL
OPC
RCA
SCR
SGA
SEC 6
OTH

Order.

c. Document being filed on behalf of AARP

d. There are a total of 9 pages.

e. The document attached for electronic filing is AARP's Post-Hearing Brief and Statement of Issues and Positions.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION ORIGINAL

In re: Florida Power & Light Company's Petition for Issuance of a Storm Recovery Financing Order	)	Docket No. 060038-EI
	)	Filed: April 28, 2006

AARP'S POST HEARING STATEMENT OF ISSUES AND POSITIONS

Pursuant to Order No. PSC-06-0301-PHO-EI , issued April 18, 2006, AARP files its Post Hearing Statement Of Issues And Positions, as follows:

BASIC POSITION:

AARP: *In view of recent large fuel and 2004 storm increases, costs approved here should be limited to the full extent allowed by law. Customers should enjoy the benefit of the doubt when FPL's facilities inspection/maintenance and tree-trimming practices are examined. Questions of "double-counting" of costs should be strictly construed against the utility where legally permissible. "Lost revenues" should be considered anathema. There should be no storm fund replenishment through securitization and no more than $200 million funded through a surcharge.*

GENERAL ADOPTION OF OFFICE OF PUBLIC COUNSEL'S POSITIONS:

Except where specific statements of position are listed below, AARP will, for all other issues, adopt the positions stated by the Office of Public Counsel, including where the Office of Public Counsel has stated its position as being "no position."

STORM DAMAGE RESERVE

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

AARP: *There is a "new day" for storm cost recovery closely akin to a recovery clause with the potential for interim rate relief prior to evidentiary hearing. Consequently, there should be $0 for a storm reserve funded through securitization, a process involving borrowing money to invest it at a lower rate. Reserve funding, if by surcharge, should be no more than $200 million, if a reserve is funded and at a level not to exceed the current surcharge.*

ARGUMENT:

Initially, the Commission should directly confront the totality of what FPL is asking this Commission to financially impose on its customers. While often publicly described as a petition seeking authority to issue roughly $1,050 million in storm-recovery bonds, the reality is that FPL asks Commission permission to bill its customers some $2,086 million, or a little more than $2 billion, in total revenues over the proposed 12 year life of the securitization. (Exhibit 6, total of entries on line 16 equals $2,086,040,000.) The difference in the numbers is substantial and of great importance to customers.

Borrowing At 5% To Invest At 4% Is Economically Unsound

In response to questioning by Commissioner Deason, FPL witness Dewhurst generally acknowledged that the historical ten year average interest earned on FPL's funded storm reserve had been "slightly above 4 percent." (T-1781.) Having customers support a storm reserve accrual through base rates and investing the money in a funded reserve returning interest at 4 percent may have made sense historically, but borrowing $400 million (the pre-tax amount of the $650 million reserve) at an interest rate of slightly over five percent in order to then invest it in a fund earning slightly more than four percent (a net loss of 1% on the total, not counting associated costs and fees) hardly seems prudent. AARP fails to see the wisdom or necessity of such a storm reserve solution, especially given the utility's recent ability to rapidly recover its prudent storm cost-recovery expenditures through an interim storm surcharge granted prior to an evidentiary hearing. The Commission should think "small" when considering funding any level of storm reserve now, and should consider allowing for no reserve when securitization will result in a net interest loss on the transaction. Every dollar not bonded under FPL's securitization

proposal will result in substantial tax and interest savings to its customers, as well as savings on other fees that are proportional to the principal to be bonded.

Securitizing A $650 Million Storm Reserve Results In Excessive Fees, Taxes And Interest

AARP/OPC witness Stewart testified that one of his reservations with the $650 million storm reserve requested by FPL was that it would necessarily incur significantly more interest expense and other costs and fees than a smaller reserve. (T-1054.)

Consistent with Mr. Stewart's testimony on increased costs and fees, it is clear the $1,050 million principal to be financed through securitization understates the full financial impact on customers of this Commission's decision because it ignores the impact of taxes, compound interest at an average rate of 5.06% and annual administrative costs of $850,000, among others. Consequently, every dollar awarded by the Commission for securitization will ultimately cost FPL's customers close to two dollars through securitization charges on their consumption. In the face of the large securitization costs and fees, the Commission should seek to reduce the dollars securitized to the maximum extent possible by disallowing the legally permissible maximum of "costs" claimed to be storm-related, but disputed by Public Counsel's witnesses, and, more readily, by greatly reducing, or completely eliminating, the storm reserve to be bonded.

FPL witness Dewhurst's Exhibit 6 illustrates the high level of fees and costs. For example, the total interest on the bonds over 12 years for a principal amount of $1,050 million is $373.4 million (line 9), while the taxes to be borne by the customers are $652.2 million (line 14), bringing the total costs for taxes and interest to $1,025.6 million, or just $25 million short of the amount to be bonded. Again, this amount does not include the associated regulatory assessment

fees and local government franchise fees that customers will also have to pay on the total of $2.086 billion. Another proportional financial burden on customers is represented by underwriting fees of .5 percent of the principal, or $5.25 million. Furthermore, it appears that some of the balance of the $6,164,859 of the "estimated up-front storm recovery bond issuance costs" are also proportional to the principal and could be reduced by lowering the principal. (See Exhibit 8.)

The $400 million of pre-tax dollars related to the proposed $650 million storm reserve is 38.1 percent of the $1,050 million sought to be bonded. Completely eliminating the $650 million storm reserve from the proposed financing would, consequently, reduce the revenues to be collected from customers over the 12 year term by fully $794,781,240 ($2,086,040,000 x 38.1%) without regard to any additional savings achieved for customers associated with reductions in the other fees and costs proportional to the principal, such as franchise fees and regulatory assessment fees. The Commission should keep in mind that the $400 million associated with the $650 million storm reserve will, according to Footnote 1 of Exhibit 6, be borrowed at "a weighted average interest rate of 5.06%," but likely will then be invested at a return of just slightly more than 4 percent if the ten year historical average interest rate, acknowledged by Mr. Dewhurst, is maintained.

"The Level Of The Reserve Has No Impact On FPL's Hurricane Exposure"

FPL witness Dewhurst testified in his rebuttal testimony that:

> Clearly, the level of the reserve has no impact on FPL's hurricane exposure. Accordingly, a lower reserve will simply shorten the expected time before it becomes necessary to return to the Commission and seek recovery of additional restoration costs. Other things equal, this will lead to greater rate volatility. (T-1678.)

While he testified that a lower reserve, given a certain frequency of damaging storms, would require FPL to return more frequently to the Commission for storm cost recovery, Mr. Dewhurst conceded that FPL had an expectation of recovering its prudent storm costs, whether through a hearing that resulted in a surcharge, or one resulting in a securitization order. (T-1763.)

To the extent that a lower storm reserve might result in more frequent hearings if the level of storm damages causes the reserve to go negative, AARP and all the customer parties have taken the position that they prefer a lower reserve in the range of $150 to $200 million, as opposed to the $650 million sought by FPL. (See parties positions on Issue 37.) To the extent FPL has a reasonable expectation that it will fully recover its prudent costs by either having: (1) a larger reserve through securitization or (2) a smaller reserve with more frequent hearings and surcharges, it should be indifferent to the methodology used and defer to its customers' preference for a smaller reserve.

There Is A Higher Level Of Cost Review And Scrutiny With Hearings

AARP/OPC witness Stewart testified that he believe one of the advantages of having a smaller reserve fund was that the review of claimed storm recovery costs would be more stringent through hearings than if the reserve were larger and FPL merely withdrew funds from the established reserve. (T-1053.) For his part, while testifying there were detriments associated with more frequent hearings, Mr. Dewhurst agreed "that in general there will be a heightened level of scrutiny if there is an adversarial process in which people go through extensive discovery. (T-1756.) Both the record in this case and in Docket No. 041291 (FPL's 2004 storm case) would suggest Mr. Dewhurst is correct with regard to the advantages of the adversarial

hearing process. With all due respect to Staff, audits are not an acceptable substitute.

To the extent that a smaller reserve will result in more frequent hearings and greater regulatory scrutiny of the reasonableness and prudence of the utility's claimed storm recovery costs, AARP believes a smaller reserve is preferable over a larger reserve. Again, the smaller reserve will also avoid unnecessarily increasing costs and fees.

FPL Can Expect Rapid Interim Surcharge Relief, If Required

AARP/OPC witness Stewart testified he believed FPL would not be prejudiced by a smaller reserve fund that is rendered negative as a result of storm damages because of the utility's apparent ability to quickly obtain interim storm damage surcharge relief without first having an evidentiary hearing. (T-1052.) During his cross-examination, Mr. Dewhurst agreed that FPL received an interim surcharge in its 2004 storm case pending the full prudency review and, further, that the interim surcharge was granted without the benefit of a prior evidentiary hearing. (T-1759.)

Review of the final order in the 2004 storm cost recovery case reveals FPL was granted permission to begin charging its customers an interim storm surcharge within less than three months after petitioning to do so. (Order No. PSC-05-0937-FOF-EI, at page 2.)

Since FPL is not prejudiced by petitioning for interim storm surcharge relief and because having a smaller reserve fund will result in both lower securitization costs to its customers and greater scrutiny of the utility's subsequently claimed storm cost recovery expenses, if they occur, AARP believes a smaller storm reserve, as testified to by Mr. Stewart, is greatly preferable to the larger $650 million reserve testified to by Mr. Dewhurst and requested by FPL.

There Is No Analytical Way To Establish An Appropriate Reserve Fund Level

In response to a question by Commissioner Carter, FPL witness Dewhurst acknowledged there was no analytical way of establishing the amount of the reserve fund. (T-138.) In fact, FPL and Mr. Dewhurst do not claim the $650 million figure was arrived at analytically. Rather, with virtually no discussion of methodology in his testimony, but acknowledging "there is no single correct Reserve balance (T-64.)," Mr. Dewhurst converted Mr. Harris' expected average annual cost for windstorm losses of approximately $73.7 million into a case for a $650 million reserve. (T-64,65.)

Mr. Stewart's testimony, as illustrated by Exhibit 87, is that a reserve as small as $60 to $100 million would have covered the actual storm damage losses experienced by FPL in 13 of the last 16 years, or in roughly 81 percent of those years. (T-1050.) Now, interim relief can cover the others.

Conclusion

If approved without modification, FPL's petition will cost its customers $2.086 billion in increased rates over 12 years. This Commission should do everything within its power to limit the increases. Taking out a 12 year "mortgage" at an interest rate in excess of five percent to pay off established, prudent storm recovery costs may make economic sense, but borrowing $400 million to invest it at 4 percent to cover future contingencies does not. As AARP/OPC witness Stewart testified:

> "The problem with this request is that a storm has not yet hit, a claim has not yet been filed and a review of expenses that have not yet been incurred has not yet been completed. . . . The Commission's denial of FPL's request and the acceptance of my recommendation will keep $450 million in consumers' pockets without any adverse effect on FP&L's bottom line. I urge this Commission to recognize this fact and to choose the consumers' pockets over FPL's request." (T-1054-1055.)

If, and when, FPL experiences new storm damage, the precedent established by its 2004 storm case will allow it rapid interim storm cost surcharge relief for actual damages experienced, the prudence of which may subsequently be tested by its customers in an evidentiary hearing. Furthermore, in as little as three years there may be a FPL base rate case in which a storm damage accrual could be included in base rates. The $650 million reserve testified to by Mr. Dewhurst is not supported by an analytical approach or otherwise by competent, substantial evidence. Approving the $650 million reserve will result in huge and unnecessary interest expense and taxes and other associated fees and costs. The $400 million pre-tax bonded to support a $650 million reserve will be borrowed at an interest rate slightly above 5 percent, but will be invested, at a loss, in a fund that historically earned little more than 4 percent.

The Commission should not approve any level of storm reserve that requires securitization at an interest rate 25 percent higher than it can be invested in a funded reserve. To the extent the Commission approves a storm reserve fund at all, it should do so through the implementation of a surcharge whose term of years is sufficient to keep the surcharge at, or lower, than the currently approved storm surcharge. In any event, the level of a storm reserve should be no greater than the $200 million testified to by Mr. Stewart.

Respectfully submitted,

/s/ Michael B. Twomey

Michael B. Twomey
Attorney for AARP
Post Office Box 5256
Tallahassee, Florida 32314-5256
Telephone: 850-421-9530
Email: miketwomey@talstar.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this petition has been served by U.S. Mail and electronic mail this 28th day of April, 2006 on the following:

Wm. Cochran Keating, Esquire
Katherine Fleming, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

John W. McWhirter, Esquire
McWhirter Reeves
400 North Tampa Street
Tampa, Florida 33602

Harold A. McLean, Esquire
Joseph A. McGlothlin, Esquire
Patricia A. Christensen, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Tallahassee, Florida 32399-1400

Tim Perry, Esquire
McWhirter Reeves
117 South Gadsden Street
Tallahassee, Florida 32301

R. Wade Litchfield, Esquire
Natalie F. Smith, Esquire
700 Universe Boulevard
Juno Beach, Florida 33408-0420

Robert Scheffell Wright, Esquire
John T. LaVia, III, Esquire
Landers & Parsons
Post Office Box 271
Tallahassee, Florida 32302

/s/ Michael B. Twomey
Attorney