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Subject: E-Filing Docket 090079

Attachments: Docket 090079 PEF Response to Joint Intervenors' Consolidated Response.pdf

Docket 090079 PEF Response to

<<Docket 090079 PEF Response to Joint Intervenors' Consolidated Response.pdf>> Filed on behalf of Progress Energy Florida, Inc.

1. Progress Energy Florida, Inc.'s Response to Joint Intervenors' Consolidated Response to its Request for Interim Relief, Petition Related to Accounting Treatment for Pension and Storm Hardening Expenses, and Petition for Limited Proceeding to Include the Bartow Repowering Project in Base Rates.
2. Response, 14 pages; Exhibit A, 1 page; Exhibit B, 27 pages; Exhibit C, 12 pages
3. This filing is made by:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by Progress Energy Florida	DOCKET No. 090079-EI
In re: Petition of Progress Energy Florida, Inc. for Expedited Approval of the Deferral of Pension Expenses, the authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C.	DOCKET No. 090145-EI
In re: Petition of Progress Energy Florida, Inc. for a limited proceeding to include the Bartow Repowering project in base rates	DOCKET No. 090144-EI
	Filed: April 15, 2009

PROGRESS ENERGY FLORIDA, INC.'S RESPONSE TO JOINT INTERVENORS' CONSOLIDATED RESPONSE TO ITS REQUEST FOR INTERIM RELIEF, PETITION RELATED TO ACCOUNTING TREATMENT FOR PENSION AND STORM HARDENING EXPENSES, AND PETITION FOR LIMITED PROCEEDING TO INCLUDE THE BARTOW REPOWERING PROJECT IN BASE RATES

Progress Energy Florida, Inc. ("PEF" or the "Company") submits this response to the response and objections of the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), Attorney General, the Florida Retail Federation ("FRF") and PCS Phosphate (collectively "Intervenors") to PEF's petition for interim relief, petition related to accounting treatment for pension and storm hardening expenses, and petition for a limited proceeding to include the Bartow Repowering Project in base rates. Intervenors' claim that the requested relief should not be granted as a matter of law under the circumstances of this case is wrong because Intervenors' objections are without support in law or fact.

I. **PEF's Petition for Limited Proceeding to Include the Bartow Repowering Project in Base Rates on an Expedited Basis should be Granted.**

PEF's 2005 Stipulation and Settlement Agreement ("Stipulation") approved by the Commission in Order No. PSC-05-0945-S-EI provides that, if PEF's retail base earnings fall

below a 10 percent return on equity, PEF may petition the Commission to amend its base rates as a limited proceeding. PEF, accordingly, petitioned for expedited approval to include the Bartow Repowering Project in base rates at the 10 percent return on equity floor established under the Stipulation, supported by the testimony and exhibits of PEF witnesses Mr. Peter Toomey and Mr. Kevin Murray, together with revised tariff sheets for the requested rate increase.

Intervenors do not contest that PEF's retail base rate earnings have fallen below a 10 percent return on equity, nor do they contest that PEF is entitled to petition for limited proceeding rate relief to include the Bartow Repowering Project in base rates. Indeed, they concede "the stipulation recognized that major costs such as the Bartow Repowering Project could negatively impact PEF's earnings and provided a triggering mechanism to bring such assets into base rate recovery." Intervenors' Response, p. 21. Instead, Intervenors challenge PEF's request by claiming there is no "entitlement" to a 10 percent return on equity "floor" and that there should be an evidentiary hearing before the rates go into effect, even subject to refund, and the timing of the petition does not allow for that hearing. Intervenors' Response, p. 4, n. 4, pp. 23-24. Both arguments are without merit.

PEF is not claiming the parties guaranteed a 10 percent return on equity in the Stipulation. Rather, PEF asserts that it is a minimum reasonable return on equity for purposes of its limited proceeding rate relief request only. PEF could have requested a higher return and, in fact, believes the reasonable return on equity midpoint is much higher, as evidenced by its testimony in its request for permanent base rate relief. However, that would have added another issue to what is supposed to be a limited proceeding for base rate relief. Accordingly, PEF chose for purposes of the Bartow limited base rate proceeding relief in 2009 the "floor" on PEF's

return on equity that all parties to the Stipulation agreed was the point below which PEF may request base rate relief during the term of the Stipulation.[1]

The Commission approved the Stipulation as representing fair, just, and reasonable rates. Order No. PSC-05-0945-S-EI, pp. 6-7. Even Intervenors concede the 10 percent return on equity is a "trigger" authorizing PEF to seek to amend "its base rates when its achieved ROE falls below that level." Intervenors' Response, p. 4. It logically follows, then, if PEF can seek to amend its base rates when earnings fall below 10 percent, the rates no longer are fair, just, and reasonable, otherwise PEF cannot seek to amend them. That means the lowest earnings level that represents fair, just, and reasonable rates during the term of the Stipulation is 10 percent. Therefore, 10 percent earnings is a reasonable floor or minimum return for purposes of PEF's request for limited proceeding base rate relief to add the Bartow Project to base rates.

PEF had a similar 10 percent return on equity floor in its prior stipulation resolving its 2001 base rate proceeding, although there PEF bargained only for an increase in permanent base rates and not limited proceeding base rate relief, which the parties agreed to in the current Stipulation. See Order No. PSC-02-0655-AS-EI, Attachment 1, p. 16. In the proceedings addressing PEF's petition for recovery of its extraordinary 2004 hurricane expenditures, several

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[1] Intervenors claim the 10 percent ROE figure becomes "moot and obsolete" once PEF exercises the right to base rate relief under the Stipulation and that it therefore has "no further meaning." See, e.g., Intervenors' Response, p. 9, n. 7. If the parties had intended that construction they could have easily included this or similar language in the Stipulation, but they did not. The fact that they did not include such language means they intended no such meaning. Home Development Co. of St. Petersburg v. Bursani, 178 So. 2d 113, 117 (Fla. 1965) (if the parties intended a certain provision it would have been a simple matter to have said so; the fact that they did not indicates an intention to exclude such a provision); Azalea Park Utilities, Inc. v. Knox-Fla. Development Corp., 127 So. 2d 121 (Fla. 2d DCA 1961) ("[C]ourts are reluctant to add terms by implication .... 'The absence of a provision from a contract is evidence of an intention to exclude it rather than of an intention to include it.'") (citation omitted); see also Russello v. United States, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

Intervenors argued that PEF should not recover its extraordinary storm costs until its earnings fell below 10 percent in part because the stipulation at that time set a reasonable floor or bottom line of earnings at 10 percent. For example, FIPUG witness Ms. Brown testified that the 10 percent return on equity earnings floor in PEF's last rate case was a reasonable bottom line of earnings. (Exhibit A, Docket No. 041272, Tr. Vol. 7, p. 803, L. 5-8). Similarly, FRF argued in its brief in that Docket that the 10 percent ROE "still provides PEF with the ROE that it agreed to as a "floor" in the 2002 Stipulation." (Exhibit B, Docket No. 041272, FRF Post-Hearing Brief, p. 9). Likewise, another intervenor in that Docket who is not an Intervenor here, Sugarmill Woods Civic Association, Inc. (SMW), stated that the "... 10 percent equity return "floor" in the Settlement Agreement provide[s] a minimal fair return on equity for use in determining the shareholders' share of costs to be borne, ..." (Exhibit C, Docket No. 041272, SMW Post-Hearing Brief on Issues 15 and 16, p. 7). Having agreed again that earnings below a 10 percent equity return allow PEF to seek full or limited proceeding base rate relief in the current Stipulation, the Intervenors must acknowledge that a 10 percent equity return again is a "minimum" reasonable return on equity. That is all PEF is asserting in its current petition for limited base rate relief; PEF certainly can claim the reasonable equity return should be higher than 10 percent, but a 10 percent return is indisputably a minimum, reasonable earnings level under the Commission-approved Stipulation between the parties.

PEF requested expedited limited proceeding base rate relief under the Stipulation subject to refund. The alternative limited proceeding relief PEF bargained for and obtained in the Stipulation must as a matter of law mean something because Florida law requires agreements to be read to give meaning to all their terms. See United States Rubber Products, Inc. v. Clark, 200 So. 385, 388 (Fla. 1941); Paddock v. Bay Concrete Industries, Inc., 154 So. 2d 313, 315 (Fla. 2d

DCA 1963). Intervenors' argument that the requested limited proceeding rate relief cannot be granted before a typical rate case inquiry and hearing, even though it is subject to refund, improperly renders the alternative limited proceeding rate relief meaningless. Intervenors' argument should be rejected.

Further, Order No. PSC-05-0187-PCO-EI in Docket No. 041291-EI cited by Intervenors supports PEF not Intervenors. There, Florida Power & Light Company (FPL) petitioned in November 2004 for a monthly surcharge to recover extraordinary storm costs effective less than two months after they filed, or as soon as practicable, subject to refund. This preliminary surcharge petition followed an earlier FPL petition seeking to recover prudently incurred restoration costs. FPL filed a proposed revised tariff sheet but, contrary to Intervenors' contention (Intervenors' Response, p. 23, n. 12), FPL did not seek relief under the "file and suspend" provision. Order No. PSC-05-0187-PCO-EI, pp. 1-2, 14. Also, FPL petitioned for relief after the hurricanes and restoration efforts had taken place, although costs were still being incurred. OPC and FIPUG moved to dismiss and to strike FPL's surcharge petition and challenged the Commission's authority to grant the rate relief increase subject to refund before a hearing.

The Commission denied the motion to dismiss FPL's preliminary surcharge petition because the FPL settlement expressly allowed them to seek rate relief for storm costs. Id. at p. 6. The Commission denied the motion to strike the surcharge petition as an unauthorized pleading because the motion emphasized form over substance and the law clearly provides leave to amend pleadings should be freely granted in order to allow disputes to be resolved on their merits. Id. at p. 8. Turning to the challenge to its authority to grant the requested rate increase subject to refund, the Commission held that it has the authority to approve rates subject to refund in a

proceeding other than a full base rate proceeding without first conducting a full administrative hearing. Id. at pp. 11-14. The Commission determined that FPL's preliminary surcharge petition triggered application of the "file and suspend" provision and granted FPL's petition to implement a preliminary storm surcharge subject to refund before a final hearing. Id. at 15. The Commission ruled that implementation of the surcharge subject to refund with interest "fully protected" the ratepayers. Id.

PEF's limited proceeding rate relief to add the Bartow project to base rates is also authorized by its Stipulation. PEF has demonstrated the need for this rate increase in its petition, testimony, and exhibits. Indeed, Intervenors agree the Stipulation provided a mechanism to bring major costs "such as the Bartow Repowering Project" into base rate recovery. Intervenors' Response, p. 21. PEF further filed its revised tariff with its petition although PEF did not expressly request relief under the file and suspend provisions. PEF did request expedited rate relief subject to refund. Under Order No. PSC-05-0187-PCO-EI, PEF's petition for limited rate relief for the Bartow Project should be granted and the revised tariff sheet rate allowed to go into effect subject to refund pending a final hearing during PEF's full base rate proceeding where the costs of the Bartow project will also be considered. This result "fully protects" PEF's ratepayers. Order No. PSC-05-0187-PCO-EI.

By filing a revised tariff sheet to increase rates with its petition, PEF triggered application of the "file and suspend" provisions even though its petition did not explicitly reference those provisions. See Order No. PSC-05-0187-PCO-EI; Citizens v. Wilson, 568 So. 2d 904 (Fla. 1990). Under file and suspend, as interpreted by the Wilson cases, the Commission may: (i) suspend the tariff within 60 days and preclude the rates from going into effect until after a hearing; (ii) take no action within 60 days, in which case the rates go into effect (not subject to

refund) by operation of law, subject to the right of a substantially affected party to require a hearing before the rates become final; or (iii) act within 60 days to allow the rates to take effect subject to refund, subject to the right of an affected party to require a hearing before the rates become final.

The only material difference between the relief available under file and suspend and the PAA relief requested by PEF in the limited proceeding petition is that, under file and suspend, the Commission must take some action within 60 days after the filing of the tariff. This is consistent with PEF's request that the Commission take expedited action on its PAA petition concurrent with action (within 60 days) on its interim rate petition. Although in the circumstances of this case the difference between the PAA procedures and the file and suspend procedures is largely immaterial, PEF alternatively requests that its Limited Proceeding Petition be treated as a request for relief under the "file and suspend" provision rather than the PAA procedures if Staff and the Commission believe "file and suspend" is the appropriate relief mechanism. As the Commission noted, leave to amend should be freely granted to allow disputes to be resolved on their merits. Id. at p. 8; Aspsoft, Inc. v. WebClay, 983 So. 2d 761, 768 (Fla. 5th DCA 2008). No Intervenor is prejudiced by such an amendment because under the controlling authorities, the filing of the tariff triggered application of the file and suspend provision even in the absence of an explicit request. Further, Intervenors will suffer no prejudice because their argument against the implementation of the requested rates subject to refund, and their right to a hearing after interim relief has been granted, is the same under either mechanism.

II. PEF's Petition to Defer 2009 Pension Expense and to Charge Storm Hardening Initiative Expenses against the Storm Damage Reserve does not constitute retroactive ratemaking and does not violate accounting or Commission rules.

Intervenors concede the Commission-approved Stipulation grants PEF the right to request limited proceeding base rate relief if its earnings fall below 10 percent. Intervenors concede PEF's earnings have fallen below 10 percent. Intervenors' Response, p.21. Therefore, PEF can seek to amend its base rates in 2009 for the pension expense and storm hardening initiative costs in a limited proceeding. Because PEF has the right to seek such base rate relief the alternative accounting treatments that PEF proposes to mitigate any 2009 rate increase do not constitute retroactive ratemaking. Intervenors' authorities are therefore inapposite. The Commission regularly allows the creation of regulatory assets to defer costs to a later accounting period than when they otherwise would be charged as an expense. See, e.g., Order No. PSC-08-0616-PAA-GU, Docket No. 080152-GU (Sept. 23, 2008); Order No. PSC-06-1042-PAA-EI, Docket No. 060674-EI (Dec. 19, 2006). And, the South Carolina order attached as an exhibit to PEF's petition is directly on point.

PEF is not deferring 2008 pension expense, which is actually a credit. Rather, customers have received the benefit of that credit in the Company's interim rate request calculation in its petition for a full base rate proceeding. PEF does request that the Commission allow it to defer 2009 pension expense but not to the 2010 base rate proceeding (it is not included in the 2010 MFRs). Rather, PEF seeks deferral for a longer period of time, to some subsequent base rate proceeding, to allow time for the markets to recover.

This request does not violate Financial Accounting Standard (FAS) 87 or any other FAS. Paragraph 210 of FAS 87 contemplates that regulators may alter the timing of the recognition of pension expense but not the determination of the cost of the pension benefit. Paragraph 210 states: "For rate regulated enterprises, FASB 71, Accounting for the Effects of Certain Types of Regulation, may require that the difference between net periodic pension cost considered for

rate-making purposes be recognized as an asset or a liability created by the actions of the regulator. Those actions of the regulator change the timing of recognition of net periodic pension costs as an expense; they do not otherwise affect the requirements of this Statement." Thus, there is no departure from the application of FAS 87.

Likewise, PEF's request that the Commission allow it to charge storm hardening costs to the storm damage reserve does not violate the Uniform System of Accounts. If granted, the request does not violate any accounting rules. FAS 71, paragraph 12 clearly states that "[t]he actions of a regulator can eliminate a liability only if the liability was imposed by the actions of a regulator." The Commission, by directing the creation of a storm damage reserve, established a regulatory liability for these collected revenues. The Commission has authority to grant PEF's request to charge storm hardening costs by recognizing the charge for current period expenses and reversing the existing storm damage reserve regulatory liability in an equal amount because this regulatory liability was created by the Commission's own action under FAS 71.

PEF has requested a rule waiver, as it must, to allow it to charge storm hardening costs against the storm damage reserve. PEF must show (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) there is a substantial hardship from compliance with the rule. §120.542, Fla. Stats. Intervenors do not seriously challenge there is a substantial hardship to PEF as its earnings continue to slide below a 10 percent equity return amidst "the worst economic times in half a century." Intervenors' Response, p. 23. Intervenors claim PEF's request violates the reason for the storm damage reserve by relying on PEF and other statements about the use of the reserve that pre-date the storm hardening initiatives advanced by the Legislature and the Commission. Those storm hardening initiatives impose new costs upon PEF to achieve regulatory objectives that are consistent with restoration of service through the storm

damage reserve, as explained in detail in PEF's petition. Indeed, even Intervenors concede that "[s]torm hardening costs like those for tree trimming and pole inspection are somewhat, but not exclusively related to making the property resistant to hurricane damage ... ." Intervenors' Response, p. 15. (emphasis added). As a result, PEF's request for a rule waiver is appropriate.

It bears emphasis that PEF elected not to include these cost items in its petition for limited proceeding base rate relief, even though it certainly can, in an effort to mitigate the rate impact on customers in 2009. Further, PEF has not included the reduction in the storm damage reserve that would result from approval of PEF's request in calculating the 2010 revenue deficiency, thus, giving customers the benefit of a higher storm damage reserve balance and lowering the revenue deficiency for 2010. PEF believes this relief is consistent with the Stipulation and best resolves the needs of PEF and its customers in these difficult economic times.

III. The Stipulation does not preclude PEF's request for interim rate relief in its petition for permanent base rate relief.

PEF petitioned for permanent base rate relief beginning with the first billing cycle for January 2010, which is outside the term of the Stipulation. That request necessary requires a base rate proceeding in 2009. Section 366.071 provides that the Commission may, during "any" proceeding for a change of rates, authorize the collection of interim rates until the effective date of the final order. §366.071(1), Fla. Stats. PEF therefore may request interim rate relief absent some express prohibition in the Stipulation. There is none.

Section 4 of the Stipulation provides that interveners will neither seek nor support any reduction in PEF's base rates, "including interim rate decreases." There is no prohibition against PEF seeking an interim rate increase. Tellingly, the prior 2002 stipulation included similar terms with a revenue sharing mechanism replacing the range of return on equity, but provided for both

a prohibition on interim decreases and interim increases in rates. Order No. PSC-02-0655-AS-EI, Attachment 1, p. 15. When the parties negotiated the current Stipulation they kept the prohibition on an interim decrease in rates but eliminated the prohibition on an interim increase in rates. In so doing, they expressed their intent not to preclude PEF from seeking an interim increase in rates when PEF sought permanent base rate relief. Home Development Co. of St. Petersburg, 178 So. 2d at 117; Azalea Park Utilities, Inc., 127 So. 2d at 121; see also Russello, 464 U.S. at 23.

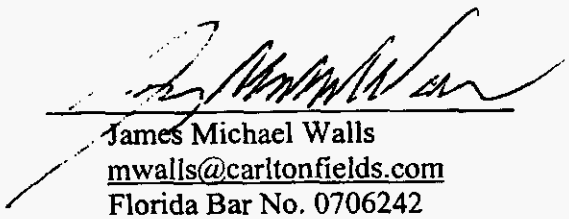
Interveners argue the 10 percent ROE is not the last authorized minimum rate of return on equity because there is no range of return under the Stipulation and therefore they claim there can be no minimum of the authorized range. Interveners' interpretation is wrong. Even Interveners concede that, if PEF's earnings fall below 10 percent, PEF is authorized to request a base rate amendment. Intervenors' Response, p. 4. Because the Commission approved the Stipulation as representing fair, just, and reasonable rates this must mean when earnings fall below 10 percent rates are no longer fair, just, and reasonable. Indeed, the Florida Supreme Court held that a prima facie case for interim relief exists when the rate of return is below the approved minimum rate of return because "it must be assumed that the Commission obeyed its statutory mandate ... [and] any rate of return below that authorized minimum must, of necessity, be unfair, unjust, unreasonable, and insufficient." Southern Bell Telephone and Telegraph Co. v. Bevis, 279 So. 2d 285, 286 (Fla. 1973) (emphasis added). To illustrate, then, if rates produce an ROE of 10.1 percent, PEF cannot seek relief, but if rates produce an ROE of 9.99 percent, PEF can seek rate relief. Therefore, the minimum authorized rate of return on equity at which rates are fair, just, and reasonable during the Stipulation term is 10 percent.

True, PEF does not have an authorized "range" on equity for purposes of addressing earnings levels, but the Stipulation nowhere says there is no minimum authorized ROE, in fact, logic demonstrates that minimum is 10 percent. The Stipulation further states that the revenue sharing mechanism is the appropriate and exclusive mechanism to address earnings levels. The revenue sharing mechanism is the proxy for the authorized "range," providing for the automatic sharing of revenues with customers receiving two-thirds above agreed-upon thresholds without having to initiate a rate case. This is a real, automatic benefit to customers that interveners ignore. The symmetrical benefit to PEF for this benefit in Section 6d is the adjustment of the retail base rate revenue cap and sharing threshold under the Stipulation. Therefore, the revenue sharing mechanism specifically incorporates the automatic sharing of revenues with customers above agreed-upon revenue thresholds and the automatic right to PEF to amend base rates if earnings fell below the 10 percent floor.

The interim rate statute provides that the "last authorized return on equity for purposes of this subsection shall be established only: in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; or by voluntary stipulation of the utility approved by the commission." §366.071(5)(b)3, Fla. Stats. (emphasis added). Here, the parties have agreed to a last minimum authorized return on equity with a revenue sharing mechanism in a Stipulation approved by the Commission consistent with the statute.

In any event, if the Stipulation does not provide the last minimum authorized rate of return, then, the "most recent" rate case where an authorized "range" of return was set was PEF's 1992 rate case. If that base rate proceeding is used, the minimum authorized ROE is 11 percent. Either way, PEF is entitled to seek interim rate relief in its permanent base rate proceeding.

Respectfully submitted,



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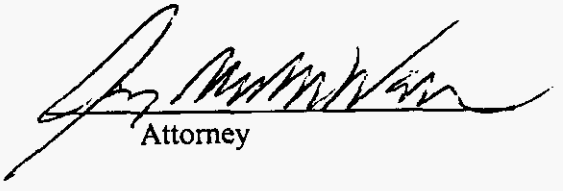
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 15th day of April, 2009.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by Progress Energy Florida	DOCKET No. 090079-EI
In re: Petition of Progress Energy Florida, Inc. for Expedited Approval of the Deferral of Pension Expenses, the authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C.	DOCKET No. 090145-EI
In re: Petition of Progress Energy Florida, Inc. for a limited proceeding to include the Bartow Repowering project in base rates	DOCKET No. 090144-EI
	Filed: April 15, 2009

PROGRESS ENERGY FLORIDA, INC.'S RESPONSE TO JOINT INTERVENORS' CONSOLIDATED RESPONSE TO ITS REQUEST FOR INTERIM RELIEF, PETITION RELATED TO ACCOUNTING TREATMENT FOR PENSION AND STORM HARDENING EXPENSES, AND PETITION FOR LIMITED PROCEEDING TO INCLUDE THE BARTOW REPOWERING PROJECT IN BASE RATES

EXHIBIT A

the other.

Q Now, Ms. Brown, I want to talk to you about your opinion regarding the reduction of PEF's 2004 earnings to a 10 percent ROE before PEF can recover costs.

On Page 23 of your direct testimony you've referred to the 10 percent return on equity earnings floor in PEF's last rate case as a reasonable bottom line of earnings; correct?

A Yes.

Q And also I believe you had referred to this rule in your testimony at Page 10, Rule 25-6.0143.

A Yes.

Q Do you have that rule with you?

A Yes.

Q If you could look at 25-6.0143(4)(b), please. It says there, quote, if the utility elects to use any of the above listed accumulated provision accounts, 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.

Did I read that accurately?

A Yes, you did a very good job of reading that accurately.

Q Now you cannot point to me any order or rule where the Public Service Commission has required a utility to incur

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EXHIBIT B

LANDERS & PARSONS, P.A.

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April 26, 2005

BY HAND DELIVERY

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Re: Progress Energy Florida Storm Surcharges, Docket No. 041272-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the Florida Retail Federation's Post-Hearing Brief and Statement of Issues and Positions in the above-styled docket. Also enclosed is a diskette containing the FRF's filing in WordPerfect format. I will appreciate your confirming receipt of this filing by stamping the attached copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,

Robert Scheffel Wright

Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of Storm Cost Recovery Clause for Recovery of Extraordinary Expenditures Related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.)	DOCKET NO. 041272-EI FILED: APRIL 26, 2005

THE FLORIDA RETAIL FEDERATION'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), and Order No. PSC-05-0339-PHO-EI, hereby files its Post-Hearing Brief and Statement of Issues and Positions.[1]

INTRODUCTION AND SUMMARY

The fundamental issue in this case is whether Progress Energy Florida, Inc. ("PEF" or "Progress") needs any rate relief in order to charge to its customers rates that are, considered in their totality, fair, just, and reasonable, as required by Chapter 366, Florida Statutes.[2] PEF's interests in this proceeding are represented by the company itself. The interests of PEF's captive

[1] The following abbreviations are used in this brief. The Florida Public Service Commission is referred to as the "Commission" or the "PSC." The Florida Retail Federation is referred to as the "FRF." The Office of Public Counsel is referred to as "OPC" or the "Citizens." The Florida Industrial Power Users Group is referred to as "FIPUG." Citations to the hearing transcript are in the format [Witness Name, TR abc], where abc indicates the page number cited to. Citations to hearing exhibits are in the format [EXH jkl, xyz], where jkl indicates the exhibit number and xyz indicates the page number of the exhibit cited to, if applicable.

[2] All citations to the Florida Statutes in this brief are to the 2004 edition thereof.

customers are represented by the Office of Public Counsel, representing the Citizens of the State of Florida; by the FRF, representing a large number of PEF's commercial customers; by FIPUG, representing a number of PEF's industrial customers; by the Sugarmill Woods Civic Association, representing the interests of the residents of that community in PEF's service area; and by the AARP, representing the interests of its many members who receive retail service from PEF. Collectively, these representatives of PEF's customers are referred to herein as the "Consumer-Intervenors."

The Consumer-Intervenors believe and agree that PEF is entitled to charge rates that are, considered in their totality, fair, just, and reasonable. The Consumer-Intervenors believe, however, that the Storm Surcharges proposed by PEF are, when piled on top of PEF's existing base rates, unfair, unjust, and unreasonable. The combination of PEF's base rates and PEF's proposed Storm Surcharges would impose rates that include charging twice for the exact same labor services and other costs; such rates are not fair, just, and reasonable. The combination of PEF's base rates and PEF's proposed Storm Surcharges would require PEF's captive customers to bear <u>all</u> of the costs of storm restoration and <u>still</u> provide PEF with a rate of return on equity of approximately <u>13.5 percent</u>. These results, and thus PEF's proposed surcharges, are unfair, unjust, and unreasonable, as well as directly contrary

to the principles that the Commission has articulated and consistently followed.

PEF, on the other hand, would violate and ignore the Stipulation and Settlement that PEF entered into in resolving its 2001-2002 general rate proceeding,[3] and would have the Commission abandon the principles that it articulated with respect to storm damage costs and associated ratemaking in Order 93-0918.[4] Order 93-0918 makes clear that:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."

2. "The Commission has never required ratepayers to indemnify utilities from storm damage."

3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years."

4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."

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[3] In Re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, PSC Docket No. 000824-EI, and In Re: Fuel and Purchased Power Cost Recovery Clause With Generating Performance Incentive Factor, PSC Docket No. 020001-EI, "Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reductions," Order No. 02-0655-AS-EI (Fla. Pub. Serv. Comm'n, May 14, 2002) (hereinafter the "2002 Progress Stipulation" or the "Stipulation").

[4] In Re: Petition to Implement a Self-Insurance Mechanism for Storm Damage by Florida Power & Light Company, FPSC Docket No. 930405-EI, "Order Authorizing Self-Insurance and Re-Establishing Annual Funding of Storm Damage Reserve," Order No. PSC-93-0918-FOF-EI at 5 (Fla. Pub. Serv. Comm'n, June 17, 1993). This order is herein referred to as "Order 93-0918."

Contrary to these principles, PEF seeks to charge rates that require its captive customers to bear effectively all of the risks and all of costs incurred due to the 2004 storms while preserving for itself a rate of return on equity ("ROE") of approximately 13.5 percent, approximately 350 basis points above the ROE that PEF agreed to in the Stipulation and similarly far above any reasonable ROE under current market conditions. By any reasonable definition of the word, PEF is asking the Commission to force PEF's customers to indemnify it against storm losses. In staking out this position, PEF is further acting directly contrary to the Commission's principles articulated in 1993, because PEF's "proposal does not take into account the utility's earnings or achieved rate of return." Order 93-0918 at 5. Here, PEF is already earning an adequate return on equity, and would continue to do so if any Storm Surcharges were set, as advocated by the Consumer-Intervenors, such that its return on equity for 2004 (and 2005) were maintained at 10%. In other words, PEF's proposals, and its theory of the case, nominally grounding on purported consistency with earlier-approved accounting methods, are simply and effectively this: **The utility gets to keep all the money, and the customers have to bear all the costs.** In contrast, the Consumer-Intervenors' theory of the case is fair and principled and offers to appropriately share the risks and the costs of the 2004 storms on a reasonable and principled basis that is, in fact, generous toward PEF's shareholders.

The Commission should, indeed must, reject PEF's unconscionable ploy and instead follow its statutory mandate to ensure fair, just, and reasonable rates, and also follow its previously articulated principles, and thereby ensure that the rates charged by PEF are, considered in their totality, fair, just and reasonable.

DISCUSSION AND ARGUMENT

The Commission must ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. In this case, this requires that PEF's earnings and its achieved rate of return on equity be taken into account and, accordingly, that any Storm Surcharge approved by the Commission allow PEF to earn a 10% after-tax ROE for 2004 and 2005, as required by the Stipulation or, alternately, as a generous rate of return under current market conditions. This overarching principle -- that the Commission must ensure that PEF's rates are fair, just, and reasonable -- further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. Finally, any Storm Surcharges that are approved for the demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to classes; PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this in order to ensure that any approved surcharges are fair, just, and reasonable.

I. THE COMMISSION MUST ENSURE THAT PEF'S RATES, CONSIDERED IN THEIR TOTALITY, ARE FAIR, JUST, AND REASONABLE.

A. The Commission Must Ensure That PEF's Rates, Considered In Their Totality, Are Fair, Just, and Reasonable.

The Commission's overarching statutory mandate is to regulate utilities in the public interest and to ensure that utilities' rates are fair, just, and reasonable. Fla. Stat. §§ 366.01, 366.05(1), 366.06(1)&(2), and 366.07. Clearly, the totality of a utility's rates are always at issue. A utility must not be allowed to set up "special" rates, like PEF's proposed surcharges here, that would insulate it from risk and that would, when piled on top of the utility's other rates, result in rates that are unfair, unjust, and unreasonable, yet that is exactly the ploy attempted here by PEF. By requesting full recovery through its proposed guaranteed cost recovery clause mechanism, PEF is seeking to evade any responsibility for costs that it otherwise would have to bear under the Stipulation and Settlement, and that it would otherwise have to bear by application of principles articulated by the Commission more than 10 years ago, by attempting to place those expenses outside of base rates.

B. PEF's Customers Have Compensated PEF's Shareholders Generously For Taking Risks And Would Continue To Compensate Them Generously If PEF's Surcharges Were Set So As To Provide A 10% Rate Of Return On Equity.

PEF's customers compensate PEF's shareholders generously for assuming risks attendant to the ownership and operation of the

utility. Rothschild, TR 597-98. PEF's shareholders surely do not pay PEF's customers to take any risk. Rothschild, TR 613. Mr. Rothschild demonstrated that compensation for risk can be measured by the difference between allowed or achieved rate of return on equity ("ROE") as compared to a fully guaranteed, risk-free return. TR 597-98, 612-614. For the risk-free return, Mr. Rothschild uses the fully guaranteed return on long-term U.S. Treasury bonds, which for the time periods relevant here is approximately 4.85%. TR 598.

In 2003, PEF earned an achieved FPSC-adjusted ROE of 13.43%. EXH 54, 2 of 32. In 2004, PEF earned an achieved ROE of 13.48%. EXH 54, 19 of 32. In dollars, this means that PEF's customers paid PEF's shareholders about $257 million, after-tax, as risk compensation in 2003. ((1343 - 485 basis points) @ $30 million per 100 basis points, Portuondo, TR 420, equals $257.4 million.) Appropriately grossing this amount up for income taxes, see Rothschild at TR 614, means that PEF's customers paid in approximately $412 million (using a typical revenue expansion factor of 1.6; Mr. Rothschild hypothesized an expansion factor of 1.5) in compensation to PEF's shareholders above a risk-free return in 2003. And, it is important to note, PEF's customers have no quarrel with that result for 2003.

It further means that, if PEF has its way with its customers in this proceeding, PEF's customers will pay PEF's shareholders about the same amount, approximately $259 million, after-tax, as

risk compensation for 2004. ((1348 - 485 basis points) x $30 million per 100 basis points, Portuondo, TR 420, equals $258.9 million.) Grossed up for income taxes, this means that PEF's customers will have again paid more than $410 million above a risk-free return to PEF's shareholders. The FRF believes that it is reasonable to expect at least a similar result for 2005, unless the Commission adjusts PEF's rates appropriately. Such returns are excessive, unfair, and unreasonable because they would unfairly and inequitably insulate PEF from cost risks associated with the 2004 storms, and would unfairly transfer such risks to PEF's customers.

Even at a 10% ROE, as required by the 2002 Progress Stipulation and as advocated here by the FRF and by the other Consumer-Intervenors, **PEF's customers will still pay** PEF's shareholders for 2004 **more than $154 million in after-tax compensation above the risk-free rate of return**. On a pre-tax basis, this would correspond to about $250 million in risk compensation paid in by PEF's customers. While it is presently impossible to know what PEF's earnings will be for 2005, the FRF[5] submits that this same principled approach should be applied to 2005 earnings as well: the Stipulation still applies, and 10% is a generous after-tax ROE for 2005 as well. Rothschild, TR 603. Placing on PEF's shareholders that portion of the storm costs

[5] Other Consumer-Intervenors advocate different treatments for 2005.

that reduces PEF's "return on equity down to 10.0% is fully consistent with the nature of risk and investment, as well as applicable principles of regulation." Rothschild, TR 596. Indeed, a 10% after-tax ROE is more than double the risk-free rate of return in today's financial market climate. Rothschild, TR 597-98, 601-602.

This is generous compensation for taking risks.[6] It still provides PEF with the ROE that it agreed to as a "floor" in the 2002 Stipulation. If the Stipulation is deemed not to apply (which would be incorrect in the view of the FRF), it still provides PEF with a generous after-tax rate of return relative to current market conditions, in which after-tax returns for utilities and general stocks are generally in the range of 9.3% to a bit more than 10%. Rothschild, TR 596-98, 600-602. Note, too, that PEF, depending on the amortization schedule that it chose to adopt, could potentially have filed for a base rate increase before the expiration of the Stipulation if its ROE would have fallen below 10%. However, if it had done so, its ROE would have been subject to being reset based on current market conditions, and as demonstrated above, a 10% ROE "is more than reasonable in today's financial climate." Rothschild, TR 603.

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[6] Indeed, it is particularly generous in light of the fact that approximately 53 percent of PEF's costs are presently recovered through the various cost recovery clauses and charges that the Commission has authorized. See Brown, TR 786-87.

Progress's position is simply, like the old college football cheer, even when the score is 70 to 3, "We want more!" The Commission cannot countenance such blatant overreaching. The Commission must act to ensure that the totality of PEF's rates are fair, just, and reasonable. Allowing a 10% return on equity for 2004 and 2005 would accomplish that result, it would be fair to PEF within the terms of the 2002 Stipulation, it would be fair to PEF relative to current market conditions, it would provide for a principled sharing of the risks and costs associated with the 2004 hurricanes, and it would be fair to PEF's customers who are footing the bill. Allowing PEF to charge rates that provide PEF's shareholders with ROEs in the range of 13 to 14 percent, while "simultaneously requir[ing] PEF's ratepayers to bear all of the risk that they are paying [PEF's] investors to accept," Rothschild, TR 597, 615-16, would be unfair, unjust, and unreasonable. Rothschild, TR 615-16; Brown, TR 788.

C. PEF's Predecessor, Florida Power Corporation, Has Recognized That Excess Earnings To Increase Storm Damage Accruals Is Appropriate. The Principles Involved In Using Excess Earnings To Reduce A Storm Damage Reserve Deficit Are The Same.

In 1994, Florida Power Corporation ("FPC"), PEF's predecessor, proposed to use excess earnings to, among other things, increase its storm reserve accrual. In Re: Investigation Into Currently Authorized return on Equity and Earnings of Florida Power Corporation, PSC Docket No. 940621-EI, and In Re: Petition for Authorization to Implement a Self-Insurance Program

for Storm Damage by Florida Power Corporation, PSC Docket No. 930867-EI, "Notice of Proposed Agency Action Order Establishing Earnings Cap for 1994, Accelerating Amortization and Increasing Storm Damage Reserve," Order No. 94-0852 at 1-2 (Fla. Pub. Serv. Comm'n, July 13, 1994) ("Order 94-0852"). In the proceedings that led to the issuance of Order 94-0852, FPC proposed to use, and the Commission approved the use of, overearnings, determined relative to an earnings cap based on a 12.5% ROE, first to accelerate the "Sebring going concern value," and then to increase FPC's storm damage accrual. As Order 94-0852 stated, "[i]f the acceleration of the Sebring amortization is insufficient to reduce the 1994 achieved ROE to 12.5%, **additional storm damage expense will be recognized in order to achieve the 12.5% ROE**." Order 94-0852 at 2 (emphasis supplied).

Using excess earnings is the flip side of the same coin. If PEF can use excess earnings to build the reserve by recognizing additional storm damage expense, it can use excess earnings to reduce a reserve deficit by recognizing additional storm damage expense. The key issue, then, is the reference point against which excess earnings are to be measured. As demonstrated above, a 10% after-tax ROE is fair to PEF within the terms of the 2002 Stipulation, and it is generous relative to current market conditions. Even PEF's predecessor has acknowledged that excess earnings may appropriately be applied to storm costs, and accordingly, sound and fair ratemaking allows for such use here,

and a 10% after-tax ROE as the basis for determining excess earnings is demonstrably fair.

D. Rates That Include "Double-Dipping," i.e., Double Recovery For The Exact Same Costs, Are Not Fair, Just, And Reasonable, And Accordingly, Such Double-Dipping Should Be Disallowed.

As stated clearly above and in Chapter 366, Florida Statutes, the Commission must ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. This overarching regulatory mandate requires not only that PEF's earnings and its achieved ROE be taken into account in determining any Storm Surcharges approved by the Commission, it further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. See Majoros, TR 680-81, Brown, TR 755, 761. PEF's proposals, however, would result in several such "double-dips" that the Commission should disallow, including approximately: $5.46 million in non-management employee labor payroll expense (Majoros, TR 687); $6.4 million in payroll associated with exempt management employees (Majoros, TR 687); $1.4 million of claimed storm-related costs related to tree-trimming (TR 547, 688, 731); $8.0 million in costs for removal that have already been paid by PEF's customers (Majoros, TR 737-38); and $3.04 million of claimed vehicle fleet expenses (Majoros, TR 687-88). These "double-dips" total approximately $24.3 million.

E. Other Regulatory Bodies With Jurisdiction Over PEF and Its Affiliates Do Not Allow Recovery As Requested by PEF.

In North Carolina and South Carolina, and at the federal level, Progress and its affiliates are required to amortize storm deficiencies, and are not allowed to recover storm costs through surcharges. With regard to its FERC-regulated wholesale rates, Progress is amortizing the wholesale portion of storm restoration costs through base rates over five years. Portuondo, TR 409. The FERC did not allow Progress to increase its base rates to recover storm costs. Portuondo, TR 409; Brown, TR 782. PEF's affiliate that operates in North Carolina and South Carolina, Progress Energy Carolina, has experienced hurricanes and ice storms and has incurred restoration costs as a result thereof, but neither the North Carolina nor South Carolina regulatory bodies have allowed Progress Energy Carolina a surcharge to recover storm costs. Portuondo, TR 421-22. The Florida Public Service Commission should likewise be extremely skeptical of PEF's proposed surcharges and should only allow surcharges, if at all, to the extent necessary to provide PEF with the opportunity to earn a 10% after-tax ROE for 2004 and 2005.

II. PEF'S PROPOSALS ARE DIRECTLY CONTRARY TO THE REGULATORY AND RATEMAKING PRINCIPLES PREVIOUSLY ARTICULATED BY THE COMMISSION WITH REGARD TO STORM COSTS.

The Commission has previously articulated several principles with regard to risk allocation and ratemaking relative to storm costs. PEF's positions here are directly contrary to those principles, and PEF's positions should accordingly be rejected.

In the above-cited Order 93-0918, the Commission articulated several principles applicable here, including:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."

2. "The Commission has never required ratepayers to indemnify utilities from storm damage."

3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years."

4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."[7]

In stark contrast to these principles, PEF's proposed surcharges would transfer effectively all risks and all costs associated with the 2004 storms to PEF's captive customers, thereby preserving for PEF excessive rates of return on equity, approximately 13.5% for 2004. This is directly contrary to the principles articulated by the Commission in Order 93-0918. Moreover, there is no basis for the PSC to be concerned that reducing PEF's ROE to 10% would adversely impact PEF's credit. Rothschild, TR 603-604.

PEF's proposals would, if approved, require PEF's customers to indemnify PEF's shareholders from storm damage costs. Brown, TR 745-46, 751-53. Such indemnification of PEF's shareholders by PEF's captive customers is also directly contrary to the

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[7] Order No. PSC-93-0918-FOF-EI at 5.

principles articulated by the Commission in Order 93-0918. Consistent with and bolstering this principle, Mr. Rothschild testified that "[b]ecause ratepayers pay rates that compensate investors for all risks, including storm damage, it would be entirely inappropriate to shift the full risk of such costs to ratepayers." Rothschild, TR 596. Moreover, this is fair, just, and reasonable because ratepayers are entitled to be shielded from risks by virtue of paying significant risk premiums to utility shareholders, and because investors understand that they are paid to take risks. Rothschild, TR 598. It follows directly that PEF's shareholders should bear some risk of storm costs, and the issue before the Commission is thus, "How much?" As answered by the FRF above, PEF should share down to the point at which its achieved ROEs for 2004 and 2005 are 10% after-tax.

In further stark contrast to these principles, PEF's proposals would not "take into account the utility's earnings or achieved rate of return." In fact, PEF's strategy is to ignore those earnings, as excessive as they are relative to both the Stipulation and relative to today's financial climate, directly contrary to the PSC's principles. PEF further attempts to ignore that it is "already earning an adequate return on equity," such that at least a significant part of "its storm-related expenses could be amortized in whole or in part over five years." Even amortizing the bulk of PEF's storm costs over two years would preserve for PEF an after-tax ROE of 10% for both 2004 and 2005.

This is consistent with the PSC's principles; PEF's proposals are thus inconsistent with the PSC's principles and should be rejected, or at least significantly modified as described above.

Finally, and obviously, PEF's proposal attempts to implement a surcharge for storm costs. While storm-related expenses would typically be, and have historically been, recovered through changes in base rates, such base rate changes are limited due to the Stipulation and Settlement. In substance, the FRF would agree that PEF has the right to seek base rate relief to get its base rates to a level that would provide PEF with the opportunity to earn a rate of return on equity of 10.0%. Although PEF has not asked for this relief, as it should have, the FRF is agreeable to treating PEF's petition for its proposed Storm Surcharges as requesting such relief, and to the Commission handling the issues in this docket. Any approved Storm Surcharges should cease to exist as soon as the allowed storm damage balance, adjusted so that the totality of PEF's rates provide for a 10% after-tax ROE for 2004 and 2005 and also adjusted to correct for inappropriate double-dipping, is recovered.

III. ANY STORM SURCHARGES APPROVED BY THE COMMISSION SHOULD RECOVER DEMAND-RELATED COSTS CONSISTENTLY RELATIVE TO THE ALLOCATION OF SUCH COSTS.

Any Storm Surcharges that the Commission approves for PEF's demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to

classes. PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this proposal in order to ensure that any approved surcharges are fair, just, and reasonable.

For the purposes of setting surcharges for PEF's demand-metered GSD, CS, and IS rates, costs should be recovered through a demand charge consistent with the allocation of the costs to be recovered. The storm restoration costs consist almost entirely, if not entirely, (a) transmission costs, which are allocated to rate classes on the basis of the classes' contributions to PEF's coincident peak demands, and (b) distribution costs, which are allocated to rate classes on the basis of the classes' non-coincident peak demands. Portuondo, TR 409-10. Progress's proposed surcharges, however, would recover these costs on an energy basis. Portuondo, TR 410. PEF's witness Portuondo acknowledged that PEF recovers a significant amount of demand-related transmission and distribution costs "through a flat dollars per kW demand charge in base rates," and he further agreed that "allocating on the basis of demand and recovering on the basis of energy is inconsistent vis-a-vis customers with different load factors within demand metered classes." Portuondo, TR 410; Brown, TR 771-772. The Commission should not allow this acknowledged inconsistency, and should instead require PEF to set any Commission-approved surcharges for PEF's demand-metered GSD,

CS, and IS rates, so as to recover costs through a demand charge consistent with the allocation of the costs to be recovered.

CONCLUSION

Ultimately, this is simply a case about PEF's rates. The Commission's statutory mandate is to ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. In this situation, this requires that PEF's earnings and its achieved rate of return on equity be taken into account and, accordingly, that any Storm Surcharge approved by the Commission allow PEF to earn a 10% after-tax ROE for 2004 and 2005, whether as required by the Stipulation or, alternately, as a generous rate of return under current market conditions. This overarching principle further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. Finally, any Storm Surcharges that are approved for the demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to classes; PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this proposal in order to ensure that any approved surcharges are fair, just, and reasonable.

STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: Did PEF act reasonably and prudently prior to the storms to minimize storm-related costs? If not, to what extent should the proposed recovery amount be adjusted?

FRF: *By agreement of the parties, this issue has been withdrawn.*

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?

FRF: *No. Through its claimed storm-related costs, PEF is attempting to require its customers to pay twice for basis levels of non-management employee labor payroll expense. To correct this inappropriate claim, $5.46 million of the amount PEF charged to the storm reserve should be disallowed.*

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?

FRF: *No. No part of payroll associated with exempt management employees should be charged to the storm reserve. To correct this inappropriate claim, $6.4 million of the amount PEF charged to the storm reserve should be disallowed.*

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

FRF: *PEF should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever occurred first.*

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?

FRF: *No. Employee training is a basic function, and accordingly, the costs for such training are not appropriately charged to the storm damage reserve and not appropriately recovered through any storm surcharge.*

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?

FRF: *No. The Commission should disallow $1.4 million of PEF's claimed storm-related costs related to tree-trimming.*

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?

FRF: *No. Through its claimed storm-related costs, PEF is attempting to require its customers to pay twice for basic levels of vehicle fleet expenses. The Commission should limit recovery of vehicle-related costs to only incremental fuel costs associated with extra shifts, and should thus disallow $3.04 million of the amount that PEF seeks to recover through its proposed surcharges.*

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?

FRF: *No. PEF's claimed storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.*

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?

FRF: *No. PEF has a basic obligation to keep its customers informed, particularly during emergencies. The Commission should disallow $2.4 million of advertising and public relations expense that PEF charged to the storm reserve.*

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

FRF: *No. Uncollectible expense is not properly charged to the storm damage reserve because it is foreign to the restoration effort. No uncollectible expense should be allowed for recovery through this proceeding, and the Commission should accordingly disallow $2.25 million of the amount that PEF seeks to recover for uncollectible expense.*

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?

FRF: *Yes. PEF should be required to offset its storm-related costs with those revenues that it received for recovery of costs associated with the level of normal operating and maintenance expenses that would have otherwise been incurred by PEF since the effective date of the Stipulation and Settlement.*

ISSUE 12: Has PEF appropriately removed from the costs it seeks in its petition all costs that should be booked as capital costs associated with its retirement (including cost of removal) and replacement of plant items affected by the 2004 storms? If not, what adjustments should be made?

FRF: *No. PEF's claimed storm-related costs should be limited to those that are incremental to the level of normal expenses that would have otherwise been incurred. Additionally, PEF's allowed storm costs should be offset by approximately $8 million of removal costs for which PEF's customers have already paid through the depreciation charges embedded in base rates.*

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?

FRF: *This issue has been stipulated.*

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

FRF: *Based on the foregoing issues, PEF's claimed storm-related costs to be charged against the storm damage reserve should be reduced by at least $33 million.*

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? (Legal issue)

FRF: *Yes. The 2002 Progress Stipulation requires that PEF defray storm-related costs from earnings to the point that its return on equity has fallen to 10%. If the costs were deferred and amortized, approximately $102 million after-tax for 2004 and a likely-similar amount for 2005, would have been borne by PEF during 2004 and 2005, while base rates under the Stipulation were still in effect. Thus, any recovery by PEF via surcharges should be reduced by these amounts.*

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? (Contingent issue)

FRF: *Yes. Even if the Commission determines that the Stipulation does not apply, the Commission should limit PEF's recovery to an amount that is sufficient, considered with PEF's existing base rates, to provide PEF with the opportunity to earn a 10% ROE. This is a generous ROE under current market conditions and will result in PEF's customers compensating PEF's shareholders generously for the risks that they take.*

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

FRF: *The amount appropriately recoverable from PEF's customers is defined by the amount claimed by PEF, $251.9 million,

less $33 million in double-counted or overstated costs, less $102 million after-tax for 2004, less the amount of PEF's earnings constituting an after-tax ROE greater than 10% for 2005. For example, if PEF's 2005 earnings exceeded those necessary to provide an after-tax 10% ROE by $60 million, the amount recoverable through surcharges would be approximately $57 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?

FRF: *The storm damage account should be credited each month with the actual costs recovered from ratepayers.*

ISSUE 19: Should PEF be authorized to accrue and collect interest on the amount of storm-related costs permitted to be recovered from customers? If so, how should it be calculated?

FRF: *Yes, if any recovery via a surcharge is allowed, PEF should charge interest, at the commercial paper rate, on the outstanding storm damage account minus the income tax savings realized by PEF.*

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

FRF: *Such costs should be collected as a separately stated charge, pursuant to a base rate rider, on customer's bills for the period of recovery. The FRF does not agree that, as a general matter or principle, a surcharge mechanism is appropriate in this or any other case. The FRF is agreeable to this mode of cost recovery, if any recovery is allowed, because in substance it will achieve the results that PEF would be entitled to under the Stipulation.*

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

FRF: *This issue has been stipulated.*

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

FRF: *For the purposes of GSD, CS, and IS rates, such costs should be recovered through a demand charge consistent with the testimony and exhibits of FIPUG Witness Sheree L. Brown. Recovery through an energy charge is inconsistent with the allocation of these costs, which are allocated on the basis of class coincident peak (transmission) and non-coincident peak (distribution) demands.*

ISSUE 23: What is the appropriate recovery period?

FRF: *This issue has been stipulated.*

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?

FRF: *This issue has been stipulated.*

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?

FRF: *This issue has been stipulated.*

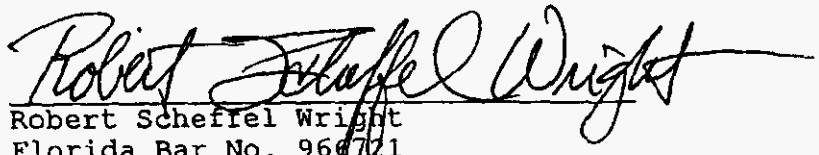
ISSUE 26: What are the effects, if any, of the study that PEF (then Florida Power) submitted to the Commission in Docket No. 930867-EI n February 28, 1994 and Order No. PSC-94-0852-FOF-EI, issued in Docket Nos. 940621-EI and 930867-EI on July 13, 1994 on the manner in which PEF may account for storm-related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

FRF: *The subject study and order are not dispositive of the issues in this docket. The 1994 order determined only that PEF's annual storm fund accrual should be increased; it did not prejudge cost recovery from PEF's captive customers under the self-insurance regime.*

ISSUE 27: Should the docket be closed?

FRF: *No. The docket should remain open to ensure that PEF collects the appropriate amount of costs, as determined by the Commission, including an appropriate credit against claimed 2004 storm costs for 2005 earnings above a 10% ROE.*

Respectfully submitted this 26th day of April, 2005.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by Progress Energy Florida	DOCKET No. 090079-EI
In re: Petition of Progress Energy Florida, Inc. for Expedited Approval of the Deferral of Pension Expenses, the authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C.	DOCKET No. 090145-EI
In re: Petition of Progress Energy Florida, Inc. for a limited proceeding to include the Bartow Repowering project in base rates	DOCKET No. 090144-EI
	Filed: April 15, 2009

PROGRESS ENERGY FLORIDA, INC.'S RESPONSE TO JOINT INTERVENORS' CONSOLIDATED RESPONSE TO ITS REQUEST FOR INTERIM RELIEF, PETITION RELATED TO ACCOUNTING TREATMENT FOR PENSION AND STORM HARDENING EXPENSES, AND PETITION FOR LIMITED PROCEEDING TO INCLUDE THE BARTOW REPOWERING PROJECT IN BASE RATES

EXHIBIT C

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.	DOCKET NO. 041272-EI FILED: April 26, 2005

SMW POST HEARING BRIEF ON ISSUES 15 AND 16

Pursuant to Order No. PSC-04-1151-PCO-EI, issued November 18, 2004, Sugarmill Woods Civic Association, Inc. files its Post Hearing Statement Of Issues, Positions And Brief On Issues 15 and 16, as follows:

Sugarmill Woods Civic Association, Inc. ("SMW") will submit its brief on issues 15 and 16 in this document and a statement of issues and positions in a separately filed document.

Combined Brief On Issues 15 and 16

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?**

SMW: *Yes. Based on the stipulation, the amount of costs that Progress Energy can recover from customers should be zero until its return on equity falls to 10%. The timing of Progress Energy collecting any costs from customers is also controlled in the stipulation by language that states its return on equity must fall to 10% before it can petition for a change in base rates and charges.*

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?**

SMW: *Yes. Investors are paid to accept risks, including the potential for storm damage, and the Commission should not insulate investors from that risk by placing 100% of the risk on customers. A 10% ROE is more than adequate currently to provide investors with a reasonable return. Therefore, even if the Commission were to

determine that the 2002 stipulation does not require this result, the 10% ROE criterion is a reasonable basis on which to apportion the storm-related costs.*

ARGUMENT

No Recovery For Past Operating Expenses Absent Pre-existing Recovery Clause

It is fundamentally important to understand that investor-owned electric utilities in Florida are not "cost, plus" business that are statutorily entitled to be indemnified by their customers so that they receive a "guaranteed" profit for any period of time, but particularly for a past period. This, however, is precisely what Progress Energy Florida, Inc. ("PEF") is seeking in this docket. Rather, the investor-owned electric utilities are regulated monopolies whose rates are set prospectively with the goal of giving the utility an opportunity of being able to recover its reasonable, necessary and prudent costs of providing the service, as well as of earning a reasonable return on its investment necessary to provide the service. Thus, if a utility's rates were set based upon a given rate base, level of annual operating expenses, number of customers and approved overall rate of return, including on equity, the subsequent placement in service of an expensive generating unit could increase both rate base and operating expenses with the result that the earned return would decrease, assuming that the customer count and revenues remained unchanged. Likewise, an increase in operating costs subsequent to rates being established, could pull down a utility's earned return if all other factors, such as customer count and annual revenues, remained the same. Conversely, an increase in customers and/or sales to them could result in an increase in a utility's earned return if the incremental costs of serving the new customers or load were less than the additional revenues obtained.

As the Commission should be aware from the general testimony in this case alone, it has long been the Commission's practice of establishing an approved range of return on equity ("ROE") consisting of an approved mid-point upon which rates are usually set, a "floor" or

minimum ROE, usually one percentage point or 100 basis points below the mid-point, and a "ceiling" or maximum ROE 100 basis points above the approved mid-point. Any earned ROE within the 200 basis point range is conclusively considered "reasonable," although prospectively subject to the challenge that circumstances have made the range itself either too high or too low for current conditions. A return below the approved range would be considered insufficient and might be a basis for a utility seeking higher rates. Likewise, a return above the ceiling would be considered excessive and could be the basis for either the Commission or customers to seek a rate decrease.

Prior to the introduction of fuel adjustment clauses in the 1960's, virtually all costs of producing electricity were recovered through base rates with the result that unexpected operating cost increases, even extraordinary costs, were not recoverable in future rates. If the increases were expected to be recurring, then the utility might be forced to seek increased rates so as to maintain reasonable earnings. If the expense were non-recurring, even if large, then the utility could expect to either have to completely absorb the expense through earnings or, at best, be allowed to amortize it as an expense in the future over a period of years. While more and more operating expenses have been allowed to be recovered through cost recovery clauses over the years, thus greatly reducing the risk to utility management and shareholders, like the environmental, capacity and conservation cost recovery clauses, these clauses typically have been statutorily authorized. There is no statute allowing or requiring that customers pay a surcharge through a clause mechanism for damage due to hurricanes or other storms, and the Commission's precedents do not include a single example of a storm surcharge until the provisional surcharge approved in the pending Florida Power & Light Company case. In fact, as the Commission should now be aware, all Commission precedent regarding the "recovery" of

storm damage costs rejected the concept of a "recovery clause" or customer surcharge and instead required customers to pay for the storm damage through accruals to a storm reserve against which costs were expensed. There is no Commission precedent for allowing customers to be surcharged for storm expenses, let alone a surcharge mechanism that requires customers to pay every dollar of storm recovery costs so that a utility's shareholders' profits are unaffected.

SMW believes the surcharge recovery sought by PEF in this case should be rejected because it would effectively transfer all risk associated with storm damage directly to ratepayers, thus completely insulating the utility and its shareholders from the clearly foreseeable business risk of facing hurricanes in Florida. Additionally, the requested surcharges should be denied because they do not take into account whether requiring the utility and its shareholders to bear all or a portion of the storm damage recovery costs would allow it to remain within the range of reasonableness on its allowed return on equity.

Commission Orders Do Not Support Surcharge Under These Facts

The prior orders of this Commission on the subject of storm damage recovery require PEF, and its shareholders, to share in the business risk of hurricane exposure in Florida and to bear a portion of the recovery costs, so long as doing so does not force the utility to fall below the minimum of its last approved range on return on equity. Aside from being consistent with the Commission's prior orders, such a result is fair given that many of PEF's customers suffered not only a loss of electric service during these four hurricanes, but additional unreimbursed financial losses. Requiring that the customers should bear even greater expense solely so PEF and its shareholders are completely insulated and suffer no financial loss is not only unfair, it is contrary to the Commission's precedents on the subject.

The Commission's rules and prior orders actually argue against PEF's requested relief. In Order No. PSC-93-1522-FOF-EI, the "Order Granting Request To Self-Insure," the Commission noted that PEF's storm damage reserve balance had been entirely depleted on two occasions and was allowed to recharge through base rates without dollar for dollar surcharges being levied on its customers. Specifically, the Commission stated at Page 4 of that order:

> Exhibit JS-1, Part C, attached to the testimony of John Scardino, presents a summary of storm damage experience from the period 1973-1993. The reserve balance remained at $1,643,000 from 1981 to 1985, when it was completely wiped out by $4,440,000 in storm damage from hurricanes Elena and Kate. The reserve was rebuilt to $4,244,000 by 1992, and was then depleted by the October 1992 tornadoes followed by the March 1993 "storm of the century."

Thus, the PEF storm damage reserve balance historically was funded by an annual accrual approved typically during the course of a base rate proceeding. Approved storm expenses were charged against the balance with the result that PEF's balance was "wiped out" on at least two occasions after which it was replenished at the rate of the approved annual accrual. There was *no customer surcharge.*

The Commission's resolution of PEF's request in Order No. PSC-93-1522-FOF-EI was clearly consistent with the Commission's rule on the subject, Rule 25-6.0143, F.A.C., meaning that the storm and other losses not covered by insurance would be charged to Account No. 228.1 Accumulated Provision for Property Insurance. With respect to the level and annual accrual rate for account, the rule provides:

> (4)(a) The provision level and annual accrual rate for each account listed in subsections (1) through (3) shall be evaluated at the time of a rate proceeding and adjusted as necessary. However, a utility may petition the Commission for a change in the provision level and accrual outside a rate proceeding.

SMW interprets this rule to mean that PEF could seek a change in the provisional level and annual accrual rate either during the course of its upcoming rate proceeding or outside of one, but not that it could seek a surcharge. If sought within the coming rate proceeding, the Commission would presumably allow the new annual accrual rate in the total annual revenues approved during the rate case. If changes were sought and approved outside a rate proceeding, as here, there is nothing in the rule to suggest customer surcharges would be approved. Rather, as in the Gulf Power case, which is discussed below, it is likely that the increased accrual would be taken against the utility's profits if prior orders were followed.

Considering PEF's earnings in evaluating its request for storm cost recovery is not only fair to its customers and in accord with the Settlement Agreement, it is thoroughly consistent with Commission Order Number PSC-93-1522-FOF-EI:

> If FPC experiences significant storm related damage, it can petition for appropriate regulatory action. In the past, this Commission has allowed recovery of prudent expenses and has allowed amortization of storm damage expenses. Extraordinary events such as hurricanes have not caused utilities to earn less than a fair rate of return. FPC shall be allowed to defer storm damage loss over the amount in the reserve until we act on any petition filed by the company. (Emphasis supplied)

SMW believes this language is abundantly clear in indicating that PEF has not only the burden of proving storm expenses incurred were necessary, prudent and reasonable in their amount, but that the financial accounting for those expenses will result in less than a fair rate of return for the utility if it is not allowed to surcharge its customers for the total. PEF does not address this point in its petition. Rather PEF is seeking to have the storm expense item considered in isolation from any of its other financials. Furthermore, the above language of the order indicates that the main goal of the Commission earlier was to assure PEF that any extraordinary expenses associated with storm damage would not cause it to earn less than a fair rate of return. The Commission's

goal clearly was not to provide a dollar for dollar pass through that would insulate PEF from the financial effects of the storms and maintain its earnings to the sole benefit of its shareholders.

As discussed at the outset here and throughout the testimony of Public Counsel's cost of capital witness, not only does the 10 percent equity return "floor" in the Settlement Agreement provide a minimal fair return on equity for use in determining the shareholders' share of costs to be borne, such a 10 percent equity return is more than fair in the current market.

In addressing Gulf Power Company's 1995 storm damages, that utility's storm damage reserve balance was also allowed by this Commission to go "negative" without it receiving a surcharge outside base rates. The Commission's overall decision in that Gulf Power Company case was clearly driven by a consideration of the impact of the storm expense on the utility's earnings, as should be the result here.

In 1995, after experiencing over $25 million in damages from Hurricanes Erin and Opal, Gulf Power sought permission to increase its annual accrual from $1.2 million to $3.5 million beginning in 1996 and to amortize approximately $9 million of the hurricane related expenses to the accumulated provision account over the five-year period from 1996-2000. It also sought permission to apply any earning over 12.75 percent return on equity for calendar year 1995 to the accumulated provision account. The Commission approved the request to increase the annual accrual to $3.5 million but denied Gulf Power's request to increase the annual accrual effective January 1, 1996 and instead required it to make the change effective January 1, 1995 because the storm recovery costs would not be "expensed" to that year, as feared by Gulf Power, but merely charged to the accumulated provision account. On this point, the Commission said:

> The Company is not required to expense the $9 million in 1995 because the Commission Rule 25-6.0143(4)(b), Florida Administrative Code, entitled "Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4" states that:

> . . . Charges shall be made to accumulated provision Accounts regardless of the balance in those accounts.
>
> When the Commission considered this rule, we realized that there could be times when charges to the accumulated provision account could exceed the balance in the account, resulting in a negative balance.

Page 4, Order No. PSC-96-0023-FOF-EI (Emphasis supplied.)

In the same Gulf Power case, the Commission stated that the utility could address a negative balance by being given the flexibility to increase its annual accrual above the $3.5 million already approved, when it believed its earnings would allow it to do so. That is, Gulf Power would be allowed to bring its accumulated provision account positive and to a more reasonable level, but by use of its profits, not by either raising its base rates immediately or by surcharging its customers. Specifically, the Commission addressed the point at Page 4, Order No. PSC-96-0023-FOF-EI, saying:

> After charging the accumulated provision account for actual hurricane related expenditures, a negative balance will result. Even with the approval of the increase in the annual accrual to $3.5 million, effective October 1, 1995, the accumulated provision account will have a negative balance until late 1997, assuming no further charges are made due to future storm activity. This obviously is not desirable since the Company is in a self-insurance position. Therefore, we find it appropriate to allow the Company the flexibility to increase its annual accrual to the accumulated provision account when the Company believes it is in a position, from an earnings standpoint, to do so. Once the accumulated provision account balance reaches $12 million or such other level approved by us, the Company shall not increase its accrual above the annual accrual amount last approved by the Commission. (Emphasis supplied.)

If holding of this Gulf Power case were applied to PEF's petition, the Commission would merely allow PEF to determine the level of accrual to accumulated provision for 2004 and 2005

that it believes it is in a position to support "from an earnings standpoint" and without any surcharges to its customers. Such a result would clearly be consistent with the Settlement Agreement.

The Commission's treatment of FPL's request for storm damage relief in one of the first cases on the subject is also consistent with the outcome sought by SMW. Specifically, in Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, the Commission authorized FPL to begin a self-insurance plan for storm damage and to re-establish annual funding of its storm damage reserve. In rejecting a specific Storm Loss Recovery Mechanism proposed by FPL, the Commission stated its unwillingness to shift storm damage costs fully on the backs of customers, saying:

> FPL seeks approval for a Storm Loss Recovery Mechanism that would guarantee 100% recovery of expense from ratepayers, over and above the base rates in effect at the time of implementation. This would effectively transfer all risk associated with storm damage directly to ratepayers, and would completely insulate the utility from risk. We decline to approve such a mechanism at this time. (Emphasis supplied.)

SMW believes that it is incorrect to suggest the Commission left the door open for completely insulating utilities from storm risks in the future by the emphasized language above. Rather, while the above quote may appear ambiguous on the issue of subsequently insulating electric utilities completely from business risks, including those associated with storms, the statement should be considered in the context of the rest of language of the order and subsequent Commission orders on the subject. For example, the text immediately following the quote above makes clear: (1) that the Commission has never contemplated completely insulating utilities from business risks, including storm damages; and (2) that it was unlikely to approve recovery of

storm damage expenses through an ongoing cost recovery clause. Specifically, the Commission stated:

> FPL's cost recovery proposal goes beyond the substitution of self-insurance for its existing policy. The utility wants a guarantee that storm losses will have no effect on its earnings. We believe it would be inappropriate to transfer all risk of storm loss directly to ratepayers. The Commission has never required ratepayers to indemnify utilities from storm damage. Even with traditional insurance, utilities are not free from this risk. This type of damage is a normal business risk in Florida.
>
> FPL's proposal does not take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years. If the magnitude of the loss is great, the utility could draw on its line of credit and then petition the Commission to act quickly to allow expense recovery from ratepayers.
>
> Storm repair expense is not the type of expenditure that the Commission has traditionally earmarked for recovery through an ongoing cost recovery clause. Conservation, oil backout, fuel and environmental costs are currently recoverable under Commission created cost recovery clauses. These expenses are different from storm repair expense in that they are ongoing rather than sporadic expenditures.
>
> * * *
>
> Therefore, we decline to authorize the implementation of a Storm Loss Recovery Mechanism, in addition to the base rates in effect at the time, for the recovery, over a period of five years, of all prudently incurred costs in excess of the reserve to repair or restore T&D facilities damaged or destroyed by a storm.
>
> If a hurricane strikes, FPL can petition at that time for appropriate regulatory action. In the past, we have acted appropriately to allow recovery of prudent expenses and allowed storm damage amortization. We do not believe that regulated utilities should be required to earn less than a fair rate of return because of extraordinary events such as hurricanes or storms.

Pages 5-6, Order No. PSC-93-0918-FOF-EI (*Emphasis supplied.*)

Conclusion

This Commission's prior orders have consistently made clear that it would not transfer all risks of storm loss directly to ratepayers so that there would be no effect on a utility's earnings. To be consistent with precedent and fair to consumers, SMW's primary position is that the storm expense incurred by PEF should have to be amortized over an appropriate time period -- perhaps five years – and that there should be no surcharge to customers. If, however, there is a surcharge, then the amount of the recovery should be determined, not based on the amount that PEF spent, but the amount of storm cost recovery expenses that remain after PEF's shareholders absorbed costs sufficient to bring its earnings to the minimum of a fair rate of return on equity, which, pursuant to the Settlement Agreement, is 10 percent.

Respectfully submitted,

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