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06966 JUL 13 8

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.

DOCKET NO. 090145-EI
ORDER NO. PSC-09-0484-PAA-EI
ISSUED: July 6, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING RULE WAIVER AND GRANTING, IN PART, REQUEST TO
CREATE A REGULATORY ASSET TO DEFER PENSION EXPENSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On March 20, 2009, Progress Energy Florida, Inc. (PEF or Company) filed a petition seeking the expedited approval of the deferral of pension expenses, the authorization to charge storm hardening expenses to the storm damage reserve, and the waiver of Rule 25-6.0143(1)(c), (d), and (f), Florida Administrative Code (F.A.C.) (Petition). The Company is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of this Commission. PEF's service area comprises approximately 20,000 square miles in 35 of Florida's counties. PEF serves more than 1.6 million retail customers.

PEF is requesting a \$52,476,667 (\$57,216,480 system) deferral of the increase in its retail pension expense between 2008 and 2009. The \$52,476,667 represents the difference between PEF's 2009 projected pension expense of \$31,067,401 (\$33,873,480 system) and its 2008 pension income of \$21,409,266 (\$23,343,000 system). PEF is further requesting that the deferral be allowed to continue until such time as the recovery of these costs is included in base rates at some unspecified future date.

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FPSC-COMMISSION CLERK

PEF is also requesting a waiver of Rule 25-6.0143, F.A.C., to allow it to charge a projected amount of \$33,072,573 (\$36,109,276 system) of regular storm hardening distribution and transmission O&M expenses and depreciation expense to the storm damage reserve rather than to normal operating expenses. The \$33,072,573 represents O&M expenses of \$31,723,377 (\$34,361,078 system) and depreciation expense of \$1,349,196 (\$1,748,198 system). A waiver is required because the rule specifically states that only incremental storm-related restoration costs are to be charged to the storm damage reserve.

On April 3, 2009, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Attorney General's Office, The Florida Retail Federation (FRF), and PCS Phosphate (collectively, Intervenor) filed a joint consolidated response opposing three PEF filings: (1) a request for interim rate relief, (2) a petition related to the accounting treatment for pension and storm hardening expenses, and (3) a petition for limited proceeding to include the Bartow Repowering Project in base rates. On April 8, 2009, the parties and our staff met to discuss the Intervenor's joint consolidated response. At the meeting, our staff noted that while a response to a response is not normally contemplated by our rules, it might be helpful for PEF to file some additional clarifying comments regarding the Intervenor's response. The Intervenor did not object to the request at that time, nor have they filed an objection to PEF's response. PEF filed a response to the joint intervenor consolidated response on April 15, 2009.

This Order addresses the deferral of the pension expense and the waiver of Rule 25-6.0143, F.A.C. We have jurisdiction over this matter under Sections 366.04 and 366.05, F.S.

Request for Waiver

PEF's Petition

In its Petition, PEF requested a waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., to allow it to charge its expenses in 2009 for the Commission's storm hardening initiatives to the Storm Damage Reserve. PEF contended that a rule variance or waiver is appropriate when (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) substantial hardship of a technological, economic, legal, or other nature will result from compliance with the rule. See Section 120.542(2), F.S. PEF asserted that the waiver of these provisions of the Storm Damage Reserve Rule in this instance satisfied both prongs of Section 120.542(2), F.S. In particular, PEF asserted that the underlying purpose of the Storm Damage Reserve Rule provisions were otherwise satisfied because PEF's incremental storm hardening initiative expenses advanced the same purpose as the rule by preventing storm damage and weather-related outages that would necessitate the use of resources to restore electric service. PEF further asserted that its compliance with the legislative and Commission-mandated storm hardening initiatives require PEF to incur expenses at a time when utility operation and maintenance costs continue to increase but sales revenues to the utility are diminishing. As a result, PEF argued that its sales are not covering all required costs of service in 2009 and thus, PEF faces a substantial economic hardship without a rule waiver.