

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 ORDER NO. PSC-05-0339-PHO-EI ISSUED: March 28, 2005
--	--

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on March 18, 2005, in Tallahassee, Florida, before Commissioner Charles M. Davidson, as Prehearing Officer.

APPEARANCES:

CARLTON FIELDS LAW FIRM, JAMES MICHAEL WALLS, ESQUIRE, and JOHN T. BURNETT, ESQUIRE at Post Office Box 3239, Tampa, FL 33601-3239 On behalf of Florida Power Corporation d/b/a/ Progress Energy Florida, Inc. (PEF or the Company).

PATRICIA A. CHRISTENSEN, ESQUIRE, and JOSEPH A. MCGLOTHLIN, ESQUIRE, OFFICE OF THE PUBLIC COUNSEL C/O THE FLORIDA LEGISLATURE at 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400 On behalf of the Citizens of the State of Florida (OPC).

JOHN W. MCWHIRTER, ESQUIRE, McWhirter Reeves Davidson & Arnold, P.A. at 400 North Tampa Street, Tampa, FL 33602 and TIMOTHY J. PERRY, ESQUIRE, McWhirter Reeves Davidson & Arnold, P.A. at 117 South Gadsden Street, Tallahassee, FL 32301 On behalf of Florida Industrial Power Users Group (FIPUG).

MICHAEL B. TWOMEY, ESQUIRE at Post Office Box 5256, Tallahassee, FL 32314-5256 On behalf of Buddy L. Hansen and Sugarmill Woods Civic Association, Inc. (SMW).

ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers & Parsons, P.A. at 310 West College Avenue, Tallahassee, FL 32301 On behalf of Florida Retail Federation (FRF).

JENNIFER BRUBAKER, ESQUIRE, and JENNIFER RODAN, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 On behalf of the Florida Public Service Commission (Staff).

DOCUMENT NUMBER-DAT

02982 MAR 28 03

FPSC-COMMISSION OF FF

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Formal hearing proceedings before the Florida Public Service Commission are governed by Chapter 120, Florida Statutes, and Chapters 25-22 and 28-106, Florida Administrative Code. To the extent provided by Section 120.569(2)(g), Florida Statutes, the Florida Evidence Code (Chapter 90, Florida Statutes) shall apply. To the extent provided by Section 120.569(2)(f), Florida Statutes, the Florida Rules of Civil Procedure shall apply.

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120 and 366, Florida Statutes. This hearing will be governed by those Statutes and Chapters 25-22 and 28-106, Florida Administrative Code.

Rule 28-106.211, Florida Administrative Code, specifically provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of this case. This Order is issued pursuant to that authority. The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission or Prehearing Officer.

II. CASE BACKGROUND

The instant docket was opened on November 2, 2004, when PEF filed a Petition for implementation of a Storm Cost Recovery Clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan (Petition). The requested clause would provide for the recovery of approximately \$251.9 million plus interest over two years. By Order No. PSC-04-1151-PCO-EI, issued November 18, 2004, this matter was set for an administrative hearing, scheduled to take place on March 30, 31, and April 1, 2005. OPC, FIPUG, SMW, and FRF have intervened in this proceeding.

III. ATTENDANCE AT HEARING: PARTIES AND WITNESSES

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date that:

- (i) all parties agree that the witness will not be needed for cross examination; and
- (ii) all Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

IV. PENDING MOTIONS

PEF's Request for Official Recognition, filed March 18, 2005, is pending.

V. PROPOSED STIPULATIONS

CATEGORY ONE STIPULATIONS – Those stipulations on which PEF, FIPUG, OPC, SMW, FRF, and Staff agree:

With respect to replacements of plant items associated with 2004 post-storm repair and restoration activities, the parties stipulate and agree that PEF shall book to plant in service the normal cost of new plant additions under normal operating conditions, and shall book to the storm reserve (as extraordinary O&M) only the costs of new plant additions that exceed those normal amounts. PEF stipulates and agrees to verify that it has implemented this methodology and to provide final values for the portions of costs associated with new plant additions that it has booked to plant in-service and to the storm damage reserve, respectively, after it has completed the booking of relevant costs. PEF's current estimate of costs that it will book to plant in service using this methodology is approximately \$47 million dollars.

This partial stipulation addresses only the appropriate accounting methodology to be employed for the accounting of costs associated with plant replacements, and does not prevent any party from challenging the reasonableness or prudence of any individual cost item. Further, the partial stipulation does not address the aspects of Issue 12 that treat retirements and cost of removal expense, which remain at issue. (This was a partial stipulation of Issue 12)

2. The parties stipulate and agree that PEF shall charge to the storm damage reserve only the costs of those materials and supplies that PEF actually used during the 2004 post-storm repair and restoration activities, thereby excluding from the storm damage reserve any costs associated with replenishing supplies and inventories. PEF stipulates and agrees that it will verify that it has implemented this approach in a report submitted in this docket after it has completed the process of booking all storm-related costs.

This stipulation addresses only the appropriate accounting methodology to be applied to costs of materials and supplies, and does not prevent any party from challenging the reasonableness or prudence of any individual cost. (Issue 13)

3. The parties stipulate and agree as follows: (1) PEF shall accrue and collect interest on the amount of storm costs that the Commission authorizes PEF to collect from customers in this proceeding. (2) No interest shall accrue prior to the date on which the Commission's vote in this docket is rendered. (3) No interest shall accrue on any amount in excess of that which the Commission authorizes PEF to collect from customers. (4) If PEF collects from customers an amount greater than that authorized by the Commission, it shall refund the differential with interest. (5) PEF shall calculate interest by applying the 30 day commercial paper rate in the following manner: Using a 30 day Dealer Commercial Paper rate, as published in the Wall Street Journal, which is high-grade unsecured notes sold through dealers by major corporations. (This was a partial stipulation of Issue 19)
4. The parties stipulate and agree that PEF shall collect the amount of storm-related costs that the Commission authorizes it to recover from customers over a maximum period of 2 years. (Issue 23)
5. The parties stipulate and agree that the mechanism that the Commission approves for recovery of storm-related costs shall become effective 30 days following the date of the Commission's vote in this docket. Recovery shall begin with the first billing cycle of the following month. (Issue 24)
6. The parties stipulate and agree that PEF shall file tariffs reflecting the establishment of any Commission-approved mechanism for the recovery of storm-related costs from the ratepayers. (Issue 25)

CATEGORY TWO STIPULATIONS – Those stipulations on which PEF, FIPUG, FRF, and Staff agree, and on which OPC and SMW take no position.

1. The methodology for allocation of storm recovery costs should be that which is proposed in PEF's petition. (Issue 21)

VI. **OPEN PROCEEDINGS AND PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

- A. Confidential information should be treated in accordance with the provisions of the Order Establishing Procedure previously issued in this docket.
- B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing by the Commission.
2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:
 - a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing, unless approved by the Prehearing Officer for good cause shown. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
 - b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
 - c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
 - d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
 - e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

VII. PENDING CONFIDENTIALITY MATTERS

There are four pending requests for confidentiality: (1) PEF's Third Request for Confidential Classification, filed February 22, 2005; (2) PEF's Fourth Request for Confidential Classification, filed February 22, 2005; (3) PEF's Fifth Request for Confidential Classification, filed February 22, 2005; and (4) PEF's Sixth Request for Confidential Classification, filed March 16, 2005.

VIII. OPENING STATEMENTS

Opening Statements, if any, shall not exceed 15 minutes per party.

IX. WITNESSES: OATH, PREFILED TESTIMONY, EXHIBITS, AND CROSS-EXAMINATION

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read. However, all testimony remains subject to appropriate objections. Upon insertion of a witness' testimony into the record, exhibits appended thereto may be marked for identification.

Following affirmation that the witness has been sworn, the witness shall then be tendered for cross-examination by all parties and staff. Commissioners may also pose questions as they deem appropriate. Witnesses are reminded that, on cross examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and staff have had the opportunity to object and cross-examine, exhibits may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

X. ORDER OF WITNESSES

Witnesses will be heard in the following order except that where a witness has submitted both direct and rebuttal testimony, his or her direct and rebuttal testimony will be heard at the same time. As a result of discussions at the prehearing conference, each witness whose name is preceded by an asterisk (*) can be excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified as to whether any such witness shall be required to be present at hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony, as shown in Section XI of this Prehearing Order, shall be identified and admitted into the record.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jeff Lyash	PEF	1, 14, 17, 27
David McDonald	PEF	1, 4, 11, 14, 17, 27
Sarah S. Rogers	PEF	1, 4, 11, 14, 17, 27
Javier Portuondo	PEF	2 – 26
Mark Wimberly	PEF	2 – 11, 13, 14, 17, 27
James A. Rothschild	OPC	15, 16
Michael J. Majoros	OPC	2, 3, 5, 6, 7, 10, 12, 15, 16, 17
Sheree L. Brown	FIPUG	1, 15, 16, 17, 19, 21, 22, 23
Stephen A. Stewart	SMW	15, 16
*Jocelyn Y. Stephens	STAFF	

Rebuttal

Javier Portuondo	PEF
Mark Wimberly	PEF

XI. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Jeff Lyash	PEF	_____ II.-1	Map of 2004 Hurricane Tracks.
Jeff Lyash	PEF	_____ JL-2	2004 Hurricane Summary Impacts.
David McDonald	PEF	_____ DM-1	PEF's Distribution Storm Plan.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David McDonald	PEF	<u>DM-2</u>	Sample ETRs for Hurricane Frances.
David McDonald	PEF	<u>DM-3</u>	Example of Daily Goals for Each Hurricane.
David McDonald	PEF	<u>DM-4</u>	Wind Field Map of Hurricane Charley's Impact on PEF's Service Territory.
David McDonald	PEF	<u>DM-5</u>	Wind Field Map of Hurricane Frances' Impact on PEF's Service Territory.
David McDonald	PEF	<u>DM-6</u>	Wind Field Map of Hurricane Ivan's Impact on PEF's Service Territory.
David McDonald	PEF	<u>DM-7</u>	Wind Field Map of Hurricane Jeanne's Impact on PEF's Service Territory.
David McDonald	PEF	<u>DM-8</u>	Composite Exhibit of Pictures of Distribution Storm Damage.
Sarah S. Rogers	PEF	<u>SSR-1</u>	Map of the Company's Transmission Areas.
Sarah S. Rogers	PEF	<u>SSR-2</u>	Transmission Department Storm Plan.
Sarah S. Rogers	PEF	<u>SSR-3</u>	Map of Path of Hurricane Charley over PEF's Transmission System.
Sarah S. Rogers	PEF	<u>SSR-4</u>	Map of Path of Hurricane Frances over PEF's Transmission System.
Sarah S. Rogers	PEF	<u>SSR-5</u>	Map of Path of Hurricane Jeanne over PEF's Transmission System.
Sarah S. Rogers	PEF	<u>SSR-6</u>	Composite Map of Hurricane Paths on PEF's Transmission System.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Sarah S. Rogers	PEF	<u>SSR-7</u>	Composite Exhibit of Pictures of Transmission Storm Damage.
Javier Portuondo	PEF	<u>JP-1</u>	Summary of Storm Damage Reserve.
Javier Portuondo	PEF	<u>JP-2</u>	Storm Cost Recovery Clause Levelized Factors Schedule.
Mark Wimberly	PEF	<u>MVW-1</u>	Major Storm Cost Estimate Summary.
James A. Rothschild	OPC	<u>JAR-1</u>	Eastern electric utilities and their earned rates of return
James A. Rothschild	OPC	<u>JAR-2 *</u>	Appendix A – List of prior appearances (* appendices containing the witnesses’ background, were attached to prefiled testimony but were not labeled as exhibits at the time).
Michael J. Majoros	OPC	<u>MJM-1</u>	Summary of PEF’s basic estimates.
Michael J. Majoros	OPC	<u>MJM-2</u>	Cost of removal reserve at September 2004.
Michael J. Majoros	OPC	<u>MJM-3</u>	Comparison of non-recoverable O&M.
Michael J. Majoros	OPC	<u>MJM-4</u>	PEF’s treatment of budgeted overtime.
Michael J. Majoros	OPC	<u>MJM-5</u>	Extent of authority provided by PSC-93-1522-FOF-EI
Michael J. Majoros	OPC	<u>MJM-6</u>	Base salaries included in storm damage claim.
Michael J. Majoros	OPC	<u>MJM-7</u>	Transportation costs to be excluded from storm recovery claim.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Michael J. Majoros	OPC	<u>MJM-8</u>	Summary of recommended adjustments.
Michael J. Majoros	OPC	<u>MJM-9 *</u>	Appendix – witness qualifications. (* appendices containing the witnesses’ background, were attached to prefiled testimony but were not labeled as exhibits at the time).
Sheree L. Brown	FIPUG	<u>SLB-1</u>	Recalculation of PEF’s Cost of Capital to Exclude the Storm Damage Account and Associated Deferred Income Taxes.
Sheree L. Brown	FIPUG	<u>SLB-2</u>	Recalculation of Interest Provision on Deferred Costs to Recognize Deferred Income Tax.
Sheree L. Brown	FIPUG	<u>SLB-3</u>	Revised Storm Cost Recovery Clause.
Joceyln Y. Stephens	STAFF	<u>JYS-1</u>	Staff Audit Report.
<u>Rebuttal</u>			
Javier Portuondo	PEF	<u>JP-3</u>	Florida Power Corporation Evaluation of Currently Approved Storm Damage Accrual filed February 28, 1994 in Docket No. 930867-EI.
Javier Portuondo	PEF	<u>JP-4</u>	Florida Power & Light Company Transmission and Distribution Insurance Replacement Study dated October 1, 1993 in Docket No. 930405-EI.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Javier Portuondo	PEF	<u>JP-5</u>	Schedule Showing Timing Difference of Alleged Tax Benefit.
Javier Portuondo	PEF	<u>JP-6</u>	PEF Response to Staff Audit of Storm Recovery Costs Charged to the Storm Insurance Property Reserve dated February 11, 2005.
Javier Portuondo	PEF	<u>JP-7</u>	Direct Testimony of Illiana H. Piedra on behalf of Commission Staff in Docket No. 041291-EI and page 18 of Exhibit ___ (IHP-1), the Commission audit report of Florida Power and Light Company's storm cost recovery costs.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XII. BASIC POSITIONS

PEF: PEF requests the Commission to establish a Storm Cost Recovery Clause that will allow PEF to recover from its ratepayers over two years its reasonable storm costs in excess of the balance in its storm reserve. The clause should provide for the recovery of the Company's storm-related Operation and Maintenance (O&M) costs, including in part its costs in excess of typical charges under normal operating conditions for capital expenditures. As allocated to the Company's retail jurisdiction, based on estimates, the total amount to be recovered is \$251.9 million. The \$251.9 million plus interest will be recovered over two years in equal amounts, resulting in the recovery of \$132.2 million in 2005 and \$128 million in 2006, based on a January 1, 2005 start date. PEF's storm-related costs classified as capital expenditures will not be recovered directly from customers under the Storm Cost Recovery Clause. Rather, the estimated \$50 million in storm-related capital expenditures allocated to the Company's retail jurisdiction will be reported in surveillance reports and absorbed in current rates until the Company's next base rate adjustment.

The Storm Cost Recovery Clause should further incorporate the same procedural and substantive mechanisms as other cost recovery clauses implemented by the

Commission, including, for example, the true-up of estimates of costs and sales to actual costs and sales, with interest provided for any amounts carried forward that are under or over the actual costs, and the determination that the costs were reasonable and prudently incurred. Storm costs recovered under the clause will be recovered from all retail customers and will be allocated among customers in the various rate classes in the same manner that costs were allocated among the rate classes in the Company's last base rate proceeding. The impact to the average residential customer bill (1,000 KWH per month) is expected to be \$3.81 for 2005 and \$3.59 for 2006. These estimates are based on a start date of January 1, 2005 and would change if that date moved.

A Storm Cost Recovery Clause will serve the public interest. Commercial insurance coverage is no longer available for serious storms, and the annual accruals to the storm reserves established by the Commission were not designed to cover them. All parties benefit from the Storm Cost Recovery Clause. PEF can fulfill its statutory obligation to serve by safely and expeditiously restoring power for its customers with the understanding that PEF will be timely reimbursed, just as PEF was before with replacement cost insurance coverage, for all of its reasonable and prudently incurred direct costs to prepare for, respond to, and recover from catastrophic storms. Customers certainly benefit from the continued assurance that their electric service will promptly and safely be restored following such major storms. The Company and its customers benefit from this reasonable, effective, and lower-cost alternative to more expensive and inadequate third-party insurance.

OPC:

Progress Energy has failed to adhere to the terms of a 2002 stipulation in which it agreed to refrain from seeking increases in base rates unless increased expenses caused its return on equity to drop below 10%. PEF's current, post-hurricane request for a "storm cost recovery clause" is a transparent and disingenuous effort to avoid its obligations under the stipulation. Further, as the 10% ROE "floor" of the stipulation is a more than reasonable return on investment under current economic conditions, no grounds exist which would justify modifying or supplanting the stipulation pursuant to "public interest" considerations. The Commission should reject PEF's proposal out of hand and enforce the terms of the stipulation.

Even if there were no binding stipulation, the Commission should require PEF's shareholders to share the risk and burden of the extraordinary storm damage expenses with ratepayers. Ratepayers compensate investors for the risks of their investment by providing, through the rates they pay, a return that is commensurate with those risks. It would be inequitable and unfair to require customers to compensate investors fully for assuming business risks, which in Florida include the potential for hurricane damage, and then place on customers 100% of the burden of storm damages through an approach that insulates investors from the risk they are paid to accept. Again, a return on equity of 10% is more than

adequate to provide a reasonable return on shareholders' investment under prevailing economic conditions.

Accordingly, then, whether to enforce the 2002 stipulation or whether— independent of the stipulation—to allocate storm costs fairly and equitably between ratepayers and stockholders, the Commission should require PEF to absorb storm-related costs to the extent required to reduce its ROE to 10%. Based on available information for 2004, the Commission should disallow approximately \$108 million of jurisdictional expense from PEF's storm recovery request in order to accomplish this result.

With respect to the identification and quantification of storm-related costs that are eligible to be charged to the storm damage reserve, PEF should book to the storm reserve only those extraordinary costs that are incremental to the expenditures the utility would make if there had been no storms. Instead, through its proposed storm surcharge Progress Energy has charged customers for expenses that are currently recovered through base rates. This “double dipping” practice resulted in O&M expenses lower than budgeted levels, and increases in reported net income, during the periods when PEF was repairing its system and restoring service. Unless the Commission adjusts PEF's proposal by denying recovery for such items as basic labor salaries, management salaries, vehicle expense and tree-trimming expenses, to name just a few, then PEF effectively would require ratepayers to pay twice for the same expense.

Because substantial portions of the PEF request are conceptual in nature and not final, the Commission should first require the company to adhere to appropriate accounting mechanisms before PEF finalizes its booking of 2004 expenses to the storm reserve.

FIPUG:

Progress' Storm Cost Recovery Clause request is an attempt to evade its obligations under the Stipulation and Settlement of the 2002 rate case approved by Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Dockets Nos. 000824-EI and 020001-EI. Under the Stipulation and Settlement, Progress would be limited to requesting a base rate increase only if its after tax return on equity fell below 10%. By requesting full recovery through a guaranteed cost recovery clause mechanism, Progress is seeking to evade any responsibility for costs that it otherwise would have to bear under the Stipulation and Settlement by attempting to place those expenses outside of base rates. The effect of Progress's request is to shift 100% of the storm loss risk to its customers while preserving a 2004 after tax return on equity in the range of 14%—more than 200 basis points over the return allowed in the last general rate case.

PEF's accounting “games the system” in other ways. It reclassifies normal O&M expenses during the three-month storm period into storm damage activities that it proposes to collect through a recovery clause. With this accounting manipulation,

base rates paid by customers to cover normal O&M are used to increase utility profits. It then increases profits more by taking an income tax deduction for storm damage in 2004. After these calculations are in place, it seeks to create a clause to cover all storm-related expenses that were not covered by the storm damage reserve funded by PEF's customers. PEF's proposal seeks to hold PEF harmless from any damages related to the storms, while increasing costs to residents and businesses in PEF's service territory that have already absorbed storm damage costs of their own. Its proposal seeks 100% cost recovery from consumers, with no contribution from PEF, while the company benefits from increased profits. Finally, PEF's interest calculations on the storm damage recovery clause do not provide an offset for the income tax benefits that PEF received for expensing the storm damage costs for tax purposes.

Although storm-related expenses would typically be recovered through changes in base rates, such base rate changes are limited due to the Stipulation and Settlement. However, FIPUG recognizes that the impact on PEF and its ratepayers is dependent upon the amortization period ordered by the Commission. FIPUG accedes to the establishment of a two-year Storm Cost Recovery Clause as a mechanism for PEF to recover its fair share of storm-related expenses, only. However, such a clause must balance the interests of PEF and its ratepayers, while upholding a portion of PEF's obligations under the Stipulation and Settlement; and should not be a tool for PEF to recover 100% of storm-related expenses from its ratepayers. In establishing such a Storm Cost Recovery Clause, PEF should be required to limit the storm damage costs to those costs that would have otherwise caused PEF's earnings to fall below 10% in 2004. Such a clause should cease to exist as soon as the storm damage balance is recovered.

FIPUG's proposed methodology would eliminate any cost-shifting and make-up for revenues received by PEF for assisting other utilities in storm damage recovery efforts, yet protect PEF by limiting its exposure to the 10% return on equity floor established in the Stipulation and Settlement. PEF would expense \$142.7 million in 2004, reducing the amount to be recovered from ratepayers to \$121.8 million. Such a decision would result in a fair and equitable resolution of the issues and provide PEF with immediate recovery of appropriate costs. In addition, PEF's recovery would be limited to an amount that provides PEF with a return on equity of 10% for 2004, in accordance with the level of financial risk PEF assumed in the Settlement, while allowing PEF to earn in excess of this floor for 2005. Finally, it prevents PEF from manipulating the regulatory system by eliminating the "double dipping" that would occur if PEF were allowed to recover costs through a recovery clause while recovering the same costs through base rates

If the Commission chooses not to limit the storm damage costs to those costs that would have otherwise caused PEF's earnings to fall below 10% in 2004, then the Commission should, at a minimum:

- 1) Limit PEF's storm damage costs to those costs that are incremental to its normal operating and maintenance expenses;
- 2) Take into account revenues PEF received for assisting other utilities with their storm damages; and
- 3) When calculating interest on the storm damage recovery clause, should provide an offset for the income tax benefits that PEF received for expensing the storm damage costs for tax purposes.

SMW: Pursuant to its Stipulation and Settlement Agreement, Progress Energy is limited to requesting a base rate increase to be effective prior to January 1, 2006 only after its after tax return on equity falls below 10 percent. Progress Energy's requested relief in this docket is inconsistent with the Stipulation and Settlement Agreement in that it requests rate increases not as the result of existing recovery charges.

Progress Energy should be required to charge the total of its reasonable and prudent 2004 storm recovery expenses to its storm fund balance and then amortize the balance over five years. An increase in its accrual for the storm damage reserve, as well as other related relief, may be addressed in Progress Energy's base rate case, which presumably will be filed shortly.

FRF: Generally, at this time, the Florida Retail Federation agrees with the basic position and the issue-specific positions taken by the Florida Industrial Power Users Group ("FIPUG") in FIPUG's prehearing statement. The FRF, however, reserves its rights to evaluate, pursue, and explore all issues via the evidence of record in this case, and accordingly, the FRF may take final, post-hearing positions that are different from those of FIPUG. The FRF here endeavors to state its positions as definitively as possible, subject to the natural and obvious recognition that those positions may change as the result of evidence adduced at hearing. Thus, the FRF offers the following basic statement of its position in this docket.

Progress's Storm Cost Recovery Clause request is an attempt to evade its obligations under the Stipulation and Settlement of the 2002 rate case approved by Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Dockets Nos. 000824-EI and 020001-EI. Under the Stipulation and Settlement, Progress would be limited to requesting a base rate increase only if its after-tax rate of return on equity were to fall below 10%. By requesting full recovery through a guaranteed cost recovery clause mechanism, Progress is seeking to evade any responsibility for costs that it otherwise would have to bear under the Stipulation and Settlement

by attempting to place those expenses outside of base rates. The effect of Progress's request is to shift 100% of the storm loss risk to its customers while preserving a 2004 after tax return on equity in the range of 14% — more than 200 basis points over the return allowed in the last general rate case, and more than 400 basis points above the minimum rate of return threshold that PEF itself agreed to in the Stipulation and Settlement that resolved its last rate case.

PEF's accounting "games the system" in other ways. It reclassifies normal O&M expenses during the three-month storm period into storm damage activities that it proposes to collect through a recovery clause. With this accounting manipulation, base rates paid by customers to cover normal O&M are used to increase utility profits. PEF then increases its profits more by taking an income tax deduction for storm damage. After these calculations are in place, it seeks to create a clause to cover all storm-related expenses that were not covered by the storm damage reserve funded by PEF's customers. PEF's proposal seeks to hold PEF harmless from any damages related to the storms, while increasing costs to residents and businesses in PEF's service territory that have already absorbed storm damage costs of their own. Its proposal seeks 100% cost recovery from consumers, with no contribution from PEF, while the company benefits from increased profits that are so high as to render PEF's rates, considered in their entirety and totality, unfair, unjust, and unreasonable. Finally, PEF's interest calculations on the storm damage recovery clause do not provide an offset for the income tax benefits that PEF received for expensing the storm damage costs for tax purposes.

Although 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 would agree to treating PEF's petition for its proposed Storm Charges as requesting such relief, and the FRF would agree to the Commission handling the issues in this docket so as to address that ultimate issue, namely:

What, if any, rate relief does PEF need to enable it to have an appropriate opportunity to earn a rate of return on equity of 10.0% for 2004 and 2005?

Thus, in establishing such a Storm Cost Recovery Clause, PEF should be required to limit the recoverable storm damage costs to those costs that would have otherwise caused PEF's earnings to fall below 10% in 2004. Such a clause should cease to exist as soon as the storm damage balance is recovered.

This proposed methodology, which was offered by FIPUG, would eliminate any cost-shifting and make-up for revenues received by PEF for assisting other utilities in storm damage recovery efforts, yet protect PEF by limiting its exposure

to the 10% return on equity floor established in the Stipulation and Settlement. Preliminary estimates offered by FIPUG, which the FRF intends to explore more fully before and at hearing, would require PEF to expense \$142.7 million in 2004, reducing the amount to be recovered from ratepayers to \$121.8 million. Such a decision would result in a fair and equitable resolution of the issues and provide PEF with immediate recovery of appropriate costs. In addition, PEF's recovery would be limited to an amount that provides PEF with a return on equity of 10% for 2004, in accordance with the level of financial risk PEF assumed in the Settlement, while allowing PEF to earn in excess of this floor for 2005. Finally, this treatment will properly and lawfully prevent PEF from manipulating the regulatory system by eliminating the "double dipping" that would occur if PEF were allowed to recover costs through a recovery clause while recovering the same costs through base rates.

If the Commission chooses not to limit the storm damage costs to those costs that otherwise caused PEF's earnings to fall below 10% in 2004, then the Commission should, at a minimum:

1. **limit PEF's storm damage costs to those costs that are incremental to its normal operating and maintenance expenses;**
2. **take into account revenues PEF received for assisting other utilities with their storm damages; and**
3. **when calculating interest on the storm damage recovery clause, provide an offset for the income tax benefits that PEF received for expensing the storm damage costs for tax purposes.**

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

XIII. ISSUES AND POSITIONS

ISSUE 1: **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?**

POSITIONS

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

OPC: No. PEF has charged to the storm reserve basic levels of non-management employee labor expense that is paid for by customers through base rates—expenses that PEF would have incurred even if there had been no storms. By charging these expenses to the storm reserve, PEF is attempting to require customers to pay them twice. The Commission should prevent this “double dipping” by requiring PEF to charge only extraordinary expenses, incremental to base levels, to the storm reserve. This means only overtime labor expense of bargaining unit employees (and non-exempt management) should be charged to the storm reserve. \$5.46 million of the amount PEF charged to the storm reserve should be disallowed.

FIPUG: PEF’s 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.

SMW: Same position as Office of Public Counsel.

FRF: No.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: No. No part of the payroll associated with exempt management employees should be charged to the storm reserve. The Commission should remove \$6.40 million from the amount PEF seeks to recover from customers.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: PEF's claimed storm-related costs, including payroll expense associated with managerial employees, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

STAFF: Staff has no position at this time.

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

POSITIONS

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

OPC: PEF should stop charging costs related to the 2004 storm season to the storm damage reserve when foreign utilities have left, PEF employees have returned to regular hours and the work is being performed by PEF employees and the contractors whom PEF engages on a routine, ongoing basis.

FIPUG: PEF should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever is sooner.

SMW: Same position as Office of Public Counsel.

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 is sooner.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: No. Employee training, including that related to storm restoration work, is a basic function that PEF must provide. Related expenses are not extraordinary, and should not be charged to the storm damage reserve.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: 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. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding employee training expenses or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: No. PEF should be allowed to charge only the increment above its normal, budgeted levels. PEF's variance between budgeted amounts and actual expenses during the period of restoration was a positive \$3.9 million, meaning it charged a portion of the normal amount to the storm reserve. The Commission should disallow this amount.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: 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. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding tree-trimming expenses or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: No. PEF should charge only extraordinary expenses, incremental to normal levels it would have incurred in any event, to the storm reserve. PEF has charged vehicle depreciation expense and base levels of vehicle operating expense to the storm damage reserve. These expenses are covered by base revenues that customers provide. To include them in the storm reserve would require customers to pay the same costs twice. The Commission should limit recovery of vehicle-related costs to the incremental fuel costs associated with extra shifts. It should adjust the amount that PEF seeks to recover by \$3.04 million.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: 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. Pending review of the evidence of record on this issue,

the FRF takes no position at this time regarding costs associated with company-owned fleet vehicles or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: PEF should charge only extraordinary levels of call center expenses, incremental to normal levels, to the storm damage reserve account. OPC has not formulated a numerical adjustment at this time.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: 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. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding call center costs or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: PEF has a basic obligation as a public utility to keep its customers informed, particularly during emergencies. Customers should not be required to pay a surcharge to receive the benefits of this basic function. All advertising and/or public relations expense that PEF charged to the storm reserve, amounting to \$2,428,891, should be disallowed.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: 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. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding advertising or public relations costs or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

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

POSITIONS

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

OPC: PEF should not charge uncollectible expense to the storm damage reserve. The use of the reserve should be limited to the extraordinary costs of repairing PEF's system and restoring service. Uncollectible expense does not fall into this category. In addition, the determination as to whether uncollectible expense was attributable to the storms is speculative. The Commission should disallow \$2.25 million of the amount PEF seeks to recover for uncollectible expense.

FIPUG: No position at this time.

SMW: Same position as Office of Public Counsel.

FRF: Agree with OPC as to basic position regarding proper ratemaking treatment of uncollectible expense in this context. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of PEF's claimed uncollectible expense that should be disallowed for ratemaking purposes

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: No position.

FIPUG: 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. In the future, PEF should credit such revenues to the storm damage reserve.

SMW: Same position as FIPUG.

FRF: 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. In the future, PEF should credit such revenues to the storm damage reserve.

STAFF: Staff has no position at this time.

ISSUE 12: Has PEF appropriately removed from the costs it seeks in its petition all costs that should be booked to the reserve for cost of removal expense as the cost of removing plant damaged during the storm? If not, what adjustments should be made? (This issue was partially stipulated as a Category 1 Stipulation, Number 1)

POSITIONS

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

OPC: With respect to damaged plant that was removed following the 2004 storms, PEF should charge normal average amounts of cost of removal expense to the cost of removal reserve, where the cost of removal expense related to said plant that it has been collecting from customers over time through depreciation rates now resides. PEF has understated the cost of removal expense to be charged to the reserve for cost of removal by approximately \$10 million. The effect is to overstate costs charged to the storm damage reserve by this amount.

FIPUG: PEF's 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.

SMW: Same position as Office of Public Counsel.

FRF: The FRF joins in the stipulation on parts of this issue as reflected in Stipulation No. 1 in the Category 1 Stipulations above. With regard to retirements and removal costs, the FRF's position is as follows: 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. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding costs associated with capital costs, removals, and retirements of plant items or related adjustments to PEF's allowable storm-related costs, if any.

STAFF: Staff has no position at this time.

ISSUE 13: STIPULATION – CATEGORY 1 STIPULATION, NUMBER 2

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

POSITIONS

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

OPC: OPC's position is that the amount sought by PEF should be reduced by a minimum of \$33.078 million as a result of the resolution of issues 1-14. While OPC has not challenged specific expenditures on the basis of reasonableness or prudence, neither is OPC in a position to agree that the balance net of adjustments made as a result of the resolution of issues 1-14 necessarily represents reasonable and prudent expenditures.

FIPUG: The appropriate amount of storm-related costs to be charged against the storm damage reserve should reflect only those costs that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

SMW: Same position as Office of Public Counsel.

FRF: PEF's claimed storm-related costs to be charged against the storm damage reserve should be limited to those that are incremental to the level of normal operating and maintenance expenses, and incremental to other relevant costs that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time the costs that may appropriately be charged against the storm damage reserve.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: Yes. The stipulation requires that PEF defray storm-related costs from earnings to the point that its return on equity has fallen to 10% before it can seek to recover the balance of costs from customers through an increase of rates. Based on available data for 2004, the amount is approximately \$108 million (retail).

FIPUG: Yes. If such costs were expensed in the year of occurrence, PEF's earnings would have fallen below 10% and PEF would have been allowed to request a prospective increase in base rates. Given that the costs are non-recurring, the impact would have been to require PEF to absorb 100% of the storm damage costs. If the costs were deferred and amortized, a large portion of the costs would have been borne by PEF during 2004 and 2005, while base rates under the Stipulation and Settlement were still in effect. In developing a cost recovery mechanism, the Commission should recognize PEF's obligations under the Stipulation and Settlement, as well as a fair and equitable balance of PEF and ratepayer interests. This can be accomplished by requiring PEF to expense that portion of the storm damage costs that would reduce its after-tax return on equity for 2004 to 10%. The remainder could be recovered through a storm damage recovery clause with interest on the unamortized net-of-tax balance.

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.

FRF: Yes. If such costs were expensed in the year of occurrence, PEF's earnings would have fallen below 10% and PEF would have been allowed to request a prospective increase in base rates. Given that the costs are non-recurring, the impact would have been to require PEF to absorb 100% of the storm damage costs. If the costs were deferred and amortized, a large portion of the costs would have been borne by PEF during 2004 and 2005, while base rates under the Stipulation and Settlement were still in effect. In developing a cost recovery mechanism, the Commission must recognize PEF's obligations under the Stipulation and Settlement, as well as a fair and equitable balance of PEF and ratepayer interests. This can be accomplished by requiring PEF to expense that portion of the storm damage costs that would reduce its after-tax return on equity for 2004 (and 2005, as applicable) to 10%. The remainder, if any, could be recovered through a storm damage recovery clause with interest on the unamortized net-of-all-tax-effects balance.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: Yes. Investors are paid to accept risks, including the potential for storm damage. It would be inequitable in the extreme to require customers to provide a return that is commensurate with the risks investors bear over time, then insulate investors from that risk by placing 100% of the risk on customers. Under current economic conditions, 10% ROE is more than adequate to provide investors with a reasonable return on their investment. 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.

FIPUG: Yes. As discussed in the testimony of Sheree L. Brown, ordering PEF to immediately expense \$142.7 million, and limiting the amount to be recovered from customers to \$121.8 million, will result in a fair and equitable resolution of the issues.

SMW: Yes. Who is responsible for what costs and how those costs should be apportioned should be addressed in a full rate case.

FRF: Yes. Tentatively, the FRF agrees with FIPUG that ordering PEF to immediately expense \$142.7 million, and limiting the amount to be recovered from customers to \$121.8 million, will result in a fair and equitable resolution of the issues. However, the FRF reserves its rights to modify its position on this issue (and all other issues) based on the evidence introduced into the hearing record of this case.

STAFF: Staff has no position at this time.

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

POSITIONS

PEF: The appropriate amount is all direct storm-related costs incurred by the Company to prepare for, respond to, and recover from Hurricanes Charley, Frances, Ivan, and Jeanne, consistent with the Commission-approved self insurance plan, Commission orders and policy, and prior utility practice in accordance with Commission orders and policy. The Company's direct storm-related O&M costs, including in part its costs in excess of typical charges under normal operating conditions for capital expenditures, as allocated to the Company's retail jurisdiction, is, based on its estimates, \$251.9 million.

OPC: The amount sought by PEF should be reduced by a minimum of \$141 million. OPC may modify this position once discovery has been completed and the results evaluated.

FIPUG: \$121.8 million total system, with \$115.9 million recoverable from retail ratepayers.

SMW: Same position as Office of Public Counsel.

FRF: Tentatively, the FRF believes that the maximum amount of storm-related costs that PEF might be allowed to recover from its customers is \$121.8 million total system, with \$115.9 million recoverable from retail ratepayers. Again, the FRF reserves its rights to modify its position on this issue (and all other issues) based on the evidence introduced into the hearing record of this case.

STAFF: Staff has no position at this time.

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?**

POSITIONS

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

OPC: The unamortized balance approved for recovery from customers should be reported as a regulatory asset and maintained in a separate subaccount.

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

SMW: Same position as FIPUG.

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

STAFF: Staff has no position at this time.

ISSUE 19: What is the appropriate methodology to calculate the interest charged on the amount of storm-related costs permitted to be recovered from customers? (This issue was partially stipulated as a Category 1 Stipulation, Number 3)

POSITIONS

PEF: Yes, allowing the accrual and collection of interest on the amount of storm-related costs in excess of the storm damage reserve is consistent with practice under other cost recovery clauses and reimburses PEF for its carrying costs on those amounts. Interest should be calculated at the current commercial paper rate.

OPC: No position at this time.

FIPUG: Agree with FIPUG.

SMW: Same position as Office of Public Counsel.

FRF: Yes, if any. PEF should charge interest at the commercial paper rate. Interest should be charged on the outstanding storm damage account minus the income tax savings realized by PEF.

STAFF: Staff has no position at this time.

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

POSITIONS

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

OPC: Any amount authorized for recovery should be collected by means of a temporary surcharge to base rates. Within 90 days of the Commission's vote, PEF should submit a final report detailing its actual costs and the amount collected by application of the surcharge. Within 60 days of receipt of said report, parties should be required to identify any costs they assert to be unreasonable or imprudent. The Commission should conduct appropriate proceedings on any dispute raised by said objections, and thereafter order PEF to "true up" the amounts to be collected to match the amounts finally determined to be recoverable from customers.

FIPUG: Such costs should be collected as a separately stated charge on customer's bills for the period of recovery.

SMW: Same position as Office of Public Counsel.

FRF: Such costs should be collected as a separately stated charge on customer's bills for the period of recovery. In taking this position, 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 and Settlement.

STAFF: Staff has no position at this time.

ISSUE 21: STIPULATION – CATEGORY 2 STIPULATION, NUMBER 1

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

POSITIONS

PEF: Under the proposed Storm Cost Recovery Clause, the Company proposes that these costs be allocated among the various rate classes in the same manner as the Company's last approved cost of service study, i.e., production demand-related costs would be allocated using the 12 Coincident Peak ("CP") and 1/13th Average Demand ("AD") method, production energy-related costs would be allocated based on energy usage, transmission costs would be allocated using the 12 CP method, and distribution costs would be allocated using the Non-Coincident Peak method. In this manner, the allocation and calculation of the charges to customers under the Storm Cost Recovery Clause would mirror the allocation and calculation of costs under PEF's Commission-approved cost of service study and other cost recovery clauses established by the Commission. The billing factors for each customer class based on the costs and allocation factors discussed above are shown in Exhibit (JP-2).

OPC: No position.

FIPUG: 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 Sheree L. Brown.

SMW: No position.

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.

STAFF: If the Commission approves the recovery of any storm-related costs, they should be recovered from all rate classes on a cents-per-kilowatt-hour basis.

ISSUE 23: STIPULATION – CATEGORY 1 STIPULATION, NUMBER 4

ISSUE 24: STIPULATION – CATEGORY 1 STIPULATION, NUMBER 5

ISSUE 25: STIPULATION – CATEGORY 1 STIPULATION, NUMBER 6

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

POSITIONS

PEF: The February 28, 1994 study (hereinafter “Study”) and Order No. 94-0852-FOF-EI (hereinafter “Order”) are legally dispositive of the issues regarding the manner in which PEF should account for the storm-related costs in this proceeding. The Commission required PEF to file the Study in Order No. 93-1522-FOF-EI to demonstrate the appropriate accrual to the storm damage reserve and what costs would be charged to and recovered from the storm damage reserve and further held Docket No. 930867-EI open until the Study was submitted. PEF filed the Study with the Commission in February 1994 and, in July 1994 in Order No. 94-0852-FOF-EI in Docket No. 94061-EI, the Commission approved the Study by increasing the accrual to the storm damage reserve consistent with the Study and closing Dockets Nos. 930867-EI and 94061-EI. Further, the Commission expressly stated on at least three occasions that it has reviewed the study it required Florida Power and Light Company to file in its self insurance docket, which contains the same accounting approach for storm costs that PEF follows in its Study, determined that the Florida Power and Light Company Study was adequate, and Florida Power and Light Company has applied that accounting methodology on a consistent basis without objection by the Commission. PEF has also consistently accounted for storm costs in accordance with the Study for ten years through 9 hurricanes or major storms before the 2004 hurricane season without any question or objection by the Commission or any intervener about its charges for storm-related costs against the storm damage reserve.

The Study further constitutes persuasive evidence as to why the Commission should not retroactively or prospectively depart from the sound procedures that

PEF has operated under for the past 10 years with respect to booking storm-related costs to the storm damage reserve. The actual restoration or replacement cost accounting methodology reflected in the Study mirrors replacement cost insurance and, more significantly, is easier to administer than an incremental cost approach, avoids the need to account for backfill work, catch-up work, and revenue impairment under an incremental cost approach, and fairly approximates the disruptive impact of the hurricanes on the utility.

OPC: In terms of their legal effect, the February 28, 1994 study and Order No. 94-0852-FOF-EI are not dispositive of issues regarding the manner in which PEF should account for the storm-related costs in this proceeding. In the Order, the Commission found only that PEF's annual accrual to the storm reserve should be increased. It made no findings regarding the accounting methodology that PEF advanced in the document. Further, in its study PEF justified its "replacement cost approach" largely on its expectation that it would continue to have T&D insurance in place, and its assertion that the accounting for "self insurance" should be done "comparably," so as to avoid the administrative burden associated with a requirement to account for storm damage costs in a manner inconsistent with that being done in conjunction with insurance programs. Because PEF no longer has T&D insurance, the premise on which PEF based its support for the "replacement cost" accounting is no longer valid. Accordingly, even if the Commission had embraced the accounting methodology set forth in the PEF study (which it did not), the circumstances on which PEF based its proposal have changed.

Nor should the Commission find the study persuasive as to the merits. Applied to the current scenario of no transmission and distribution insurance, PEF's approach has the counterintuitive and (to ratepayers) prejudicial effect of increasing net income from base rates and requiring ratepayers to pay normal O&M costs a second time through inclusion in the amount of storm-related costs that PEF proposes to collect from customers.

FIPUG: The February 28, 1994 study and Order No. 94-0852-FOF-EI are not dispositive of issues regarding the manner in which PEF should account for the storm-related costs in this proceeding. In the Order, the Commission found only that the amount of PEF's annual accrual to the storm fund should be increased. It made no findings regarding PEF's study, and did not prejudge cost recovery from PEF's ratepayers under the "self-insurance" mechanism.

SMW: Same position as Office of Public Counsel.

FRF: Same position as Office of Public Counsel. Moreover, as a matter of law, because ratemaking is prospective, any party may support and argue any position that is not plainly contrary to statute. Thus, the positions advocated by PEF, which the

FRF joins the other intervenors in opposing, are not 'legally dispositive' in any case.

STAFF: No position at this time.

ISSUE 27: **Should the docket be closed?**

POSITIONS

PEF: Yes.

OPC: No. The docket should remain open to enable parties and the Commission to ensure that PEF collects the appropriate amount.

FIPUG: No position at this time.

SMW: No. The docket should remain open to enable parties and the Commission to ensure that PEF collects the appropriate amount.

FRF: Agree with the Office of Public Counsel.

STAFF: Staff has no position at this time.

XIV. POST-HEARING PROCEDURES

If the Commission does not make a bench decision at the hearing, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 80 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 80 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time, unless modified by the Presiding Officer.

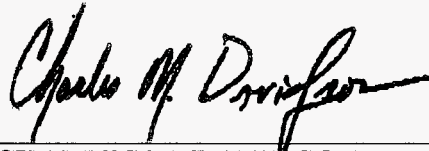
XV. RULINGS

Florida Retail Federation's Petition to Intervene, filed March 17, 2005, is granted. The summary of testimony at the time each witness takes the stand shall be limited to 3-5 minutes.

It is therefore,

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 28th day of March, 2005



CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(S E A L)

JAR/JSB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.