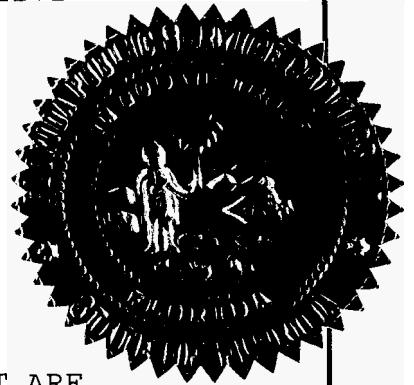


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041272-EI

In the Matter of:

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.



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THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

VOLUME 1

Page 1 through 39

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON
COMMISSIONER LISA POLAK EDGAR

DATE: Wednesday, March 30, 2005

TIME: Commenced at 11:10 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
Official FPSC Hearings Reporter
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 03125 MAR 31 3

FPSC-COMMISSIONER

1 APPEARANCES:

2 GARY SASSO, ESQUIRE, JAMES WALLS, ESQUIRE, and JOHN
3 BURNETT, Carlton Fields Law Firm, Post Office Box 3239, Tampa,
4 Florida 33601-3239, appearing on behalf of Progress Energy
5 Florida, Inc.

6 JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter Reeves,
7 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350,
8 appearing on behalf of Florida Industrial Power Users Group.

9 TIM PERRY, ESQUIRE, McWhirter Law Firm, 117 S.
10 Gadsden Street, Tallahassee, Florida 32301, appearing on behalf
11 of Florida Industrial Power Users Group.

12 HAROLD MCLEAN, ESQUIRE, JOSEPH MCGLOTHLIN, ESQUIRE,
13 and PATRICIA CHRISTENSEN, ESQUIRE, Office of Public Counsel,
14 c/o The Florida Legislature, 111 West Madison St., Room 812,
15 Tallahassee, Florida 32399-1400, appearing on behalf of the
16 Office of Public Counsel.

17 ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers & Parsons,
18 P.A., 310 West College Avenue, Tallahassee, Florida 32302,
19 appearing on behalf of the Florida Retail Federation.

20 MICHAEL B. TWOMEY, ESQUIRE, Post Office Box 5256,
21 Tallahassee, Florida 32314-5256, appearing on behalf of Buddy
22 Hansen, Sugarmill Woods Civic Association, Inc., and AARP

23

24

25

1 APPEARANCES CONTINUED:

2 JENNIFER BRUBAKER, ESQUIRE and JENNIFER RODAN,
3 ESQUIRE, FPSC General Counsel's Office, 2540 Shumard Oak
4 Boulevard, Tallahassee, Florida 32399-0850, appearing on behalf
5 of the Florida Public Service Commission Staff.

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EXHIBITS

	NUMBER:		ID	ADMTD
1				
2				
3	5	Comprehensive Exhibit List	16	16
4	6	Staff Consolidated Exhibit	16	16
5		(***REPORTER'S NOTE: Portions of Exhibit 6 not admitted into the record. See transcript, Page 15.***)		
6	7	JL-1	16	16
7	8	JL-2	16	16
8	9	DM-1	16	16
9	10	DM-2	16	16
10	11	DM-3	16	16
11	12	DM-4	16	16
12	13	DM-5	16	16
13	14	DM-6	16	16
14	15	DM-7	16	16
15	16	DM-8	16	16
16	17	SSR-1	16	16
17	18	SSR-2	16	16
18	19	SSR-3	16	16
19	20	SSR-4	16	16
20	21	SSR-5	16	16
21	22	SSR-6	16	16
22	23	SSR-7	16	16
23	24	JP-1	16	16
24	25	JP-2	16	16
25				

EXHIBITS

	NUMBER:	ID.	ADMTD.
1			
2			
3	26 MVW-1	16	16
4	27 JAR-1	16	
5	28 JAR-2	16	16
6	29 MJM-1	16	16
7	30 MJM-2	16	16
8	31 MJM-3	16	16
9	32 MJM-4	16	16
10	33 MJM-5	16	16
11	34 MJM-6	16	16
12	35 MJM-7	16	16
13	36 MJM-8	16	16
14	37 MJM-9	16	16
15	38 SLB-1	16	16
16	39 SLB-2	16	16
17	40 SLB-3	16	16
18	41 JYS-1	16	16
19	42 JP-3	16	
20	43 JP-4	16	
21	44 JP-5	16	
22	45 JP-6	16	
23	46 JP-7	16	
24			
25			

EXHIBITS

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NUMBER:

ID.

ADMTD.

47 FIPUG Stipulated Exhibit 1

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48 (Confidential) FIPUG Stipulated
Exhibit 2

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P R O C E E D I N G S

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COMMISSIONER BAEZ: We'll call this hearing to order.
Counsel, would you read the notice?

MS. BRUBAKER: Pursuant to notice, this time and
place has been set aside for the purpose of holding a hearing
in Docket 041272-EI. The purpose of the hearing is set forth
more fully in the notice.

COMMISSIONER BAEZ: And we'll start taking
appearances with Mr. Sasso.

MR. SASSO: Gary Sasso here for Progress Energy
Florida.

MR. WALLS: Mike Walls with Carlton Fields on behalf
of Progress Energy Florida.

MR. BURNETT: John Burnett, Progress Energy Florida.

MR. PERRY: Timothy Perry on behalf of the Florida
Industrial Power Users Group. With me today is John McWhirter.

MS. CHRISTENSEN: Patty Christensen on behalf of the
Office of Public Counsel.

MR. MCGLOTHLIN: Joe McGlothlin of the Office of
Public Counsel. Let me please enter the appearance also of
Harold McLean, Public Counsel, and note that we're assisted
today by Tricia Merchant and Earl Poucher.

MR. WRIGHT: Robert Scheffel Wright appearing on
behalf of the Florida Retail Federation.

MR. TWOMEY: Mike Twomey appearing on behalf of

1 Bud Hansen, Sugarmill Woods Civic Association, Inc., and AARP.

2 MS. BRUBAKER: Jennifer Brubaker and Jennifer Rodan
3 on behalf of the Florida Public Service Commission.

4 COMMISSIONER BAEZ: Thank you.

5 Ms. Brubaker, we have some preliminary matters that
6 we need to take up.

7 MS. BRUBAKER: Yes. One is just to note that
8 intervention by AARP has been granted. An order has issued in
9 this docket.

10 Another preliminary matter is that there are a number
11 of proposed stipulations that appear in the prehearing order.
12 Those begin at Page 3 and I believe conclude at Page 4. The
13 parties and staff are prepared to address any questions on
14 those stipulations. Otherwise, I think it would be appropriate
15 for the Commission to take up a ruling on those proposed
16 stipulations.

17 COMMISSIONER BAEZ: All right. Before we take up the
18 stipulations, there's some, the pending confidentiality
19 matters. And, Ms. Rodan, we can just do what -- what we
20 usually do is if there's anything pending, we deal with those
21 materials as confidential for purposes of the hearing, and then
22 we can go ahead and enter rulings or get those things out of
23 the way. Is that --

24 MS. RODAN: That's correct.

25 COMMISSIONER BAEZ: No objection? If there's no

1 objection, that's how we're going to deal with the pending
2 confidentiality matters.

3 And, Ms. Brubaker, back to you. You said we do have
4 several stipulations that you are recommending that we take up
5 at this point.

6 MS. BRUBAKER: That's correct. And also it might be
7 appropriate to recognize for the record that Issue 1 has been
8 withdrawn subsequent to the prehearing conference. It's
9 reflected correctly in the prehearing order, but just to note
10 for the record.

11 COMMISSIONER BAEZ: Very well. Let the record show
12 that Issue 1 was withdrawn.

13 Commissioners, on Page 3 of the prehearing order you
14 find the beginning of some proposed stipulations which staff
15 has recommended we take up as a preliminary matter. As you can
16 see, outlined for you we have the, the classic Category 1 and
17 Category 2 stipulations.

18 Category 1 stipulations are universal, agreed to by
19 all the parties.

20 MS. BRUBAKER: The Category 1 stipulations are
21 universal.

22 COMMISSIONER BAEZ: And the Category 2, as you can
23 see there, are stipulations in which Sugarmill Woods and I'm
24 assuming AARP as well, Mr. Twomey --

25 MR. TWOMEY: Yes.

1 COMMISSIONER BAEZ: -- and the Office of Public
2 Counsel aren't taking any position. If you've had a chance to
3 review them -- or what's your pleasure? If you want -- if you
4 have questions or want staff to walk you through them.

5 COMMISSIONER DEASON: I have no questions, Mr.
6 Chairman.

7 COMMISSIONER BAEZ: All right. I think we can
8 entertain a motion, if there aren't any questions.

9 COMMISSIONER DEASON: Move approval of the
10 stipulations, both Category 1 and Category 2.

11 COMMISSIONER DAVIDSON: Second.

12 COMMISSIONER BAEZ: Motion and a second. All those
13 in favor, say aye.

14 (Unanimous affirmative vote.)

15 COMMISSIONER BAEZ: Show the Category 1 and
16 Category 2 stipulations adopted as shown in the prehearing
17 order.

18 Ms. Brubaker, what else do we have?

19 MS. BRUBAKER: Let's see. Probably the next matter
20 to take up for -- would be the request for official recognition
21 by Progress.

22 COMMISSIONER BAEZ: The official recognition. Okay.

23 MS. BRUBAKER: I would certainly let Progress speak
24 to it. I believe that request has been withdrawn at this
25 point.

1 COMMISSIONER BAEZ: I'm sorry? You believe the
2 request has been --

3 MS. BRUBAKER: Withdrawn.

4 COMMISSIONER BAEZ: Withdrawn? Mr. Burnett?

5 MR. BURNETT: Yes, sir.

6 COMMISSIONER BAEZ: Okay.

7 MR. BURNETT: Chairman, we were able to withdraw that
8 request. And I would only add, just to note, that the majority
9 of the requests in the request for official recognition were
10 Commission orders, which, of course, the Commission can as a
11 matter of course take recognition of.

12 In the briefs that some of the intervenors raised in
13 opposition, they noted that they did not raise any disputes of
14 notorious facts such as the fact that the 2004 hurricanes did,
15 in fact, occur, that they were catastrophic in nature, and that
16 states of emergencies were declared. So we were able to
17 withdraw the recognition request on those bases.

18 COMMISSIONER BAEZ: Very well. And I thank you all
19 for being able to talk it out.

20 Ms. Brubaker, what else do we have?

21 MS. BRUBAKER: The next I would suggest taking up is
22 what's been distributed to the Commissioners, court reporter
23 and parties described as staff Exhibit 5. It's a comprehensive
24 exhibit list. It notes Exhibits 1 through 4, which were dealt
25 with at the service hearing. I would recommend that Number

1 5 be identified. It is the comprehensive exhibit list itself
2 just as a useful reference tool.

3 Exhibit 6, as I have on the list, is a staff
4 consolidated exhibit. There is one small modification of that
5 exhibit to be made, which I'll get to in a moment.

6 The rest of the list is comprised of the testimonies
7 and exhibits associated with the testimonies that were filed,
8 prefiled by the parties to this docket, including direct and
9 rebuttal.

10 There are two items that are currently, I believe, in
11 contention that the parties most likely will not stipulate to.
12 My recommendation with regard to those, and I'll identify them
13 to you, Number 27, which is Exhibit JAR-1 to Mr. Rothschild's
14 testimony, and the second is Number 46 on the list, which is
15 JP-7, an exhibit to Mr. Portuondo's rebuttal testimony.

16 My recommendation is to the extent the items listed
17 on this list can be stipulated to, that they be done so, they
18 be identified, marked and identified and entered into the
19 record, if there is no objection to that, with the exception of
20 removing those items to which there is objection.

21 I'll also note to staff's proposed Exhibit 6, the
22 staff consolidated exhibit, those discovery responses which are
23 reflected on Pages 29 and 33, they're Bate stamped, Bate
24 stamped 29 and 33, those would be Progress's response to
25 Sugarmill Woods first set of interrogatories numbers 8 and 12.

1 Staff is willing to withdraw those from the exhibit and not
2 have those entered into the record as stipulated.

3 COMMISSIONER BAEZ: All right. That was quite an
4 order. Do the parties have any objection to treating and
5 identifying the exhibits as shown in Exhibit 5? Mr. Perry?

6 MR. PERRY: FIPUG would have an objection to the
7 rebuttal exhibits that were attached to the testimony of Javier
8 Portuondo. Those are marked as Number 42 through 46. We'd
9 like the opportunity to address Mr. Portuondo on voir dire and
10 ask him some questions and possibly raise any appropriate
11 objections at that time. So we would ask that those not be
12 moved into the record.

13 COMMISSIONER BAEZ: I'm sorry. Thank you, Mr. Perry.

14 Ms. Brubaker, and I'm sorry, I'm working a cold, so I
15 may not have heard you correctly. Your recommendation was
16 merely to mark, mark them accordingly, or are you actually
17 asking to move --

18 MS. BRUBAKER: I think it would be my recommendation
19 to mark all of the exhibits.

20 COMMISSIONER BAEZ: All right.

21 MS. BRUBAKER: To the extent they cannot be
22 stipulated to, do not move those into the record. To the
23 extent exhibits can be stipulated to by the parties, move those
24 exhibits into the record at this time.

25 COMMISSIONER BAEZ: Very well. And you have

1 identified, just so that I can be clear, you've identified
2 certainly part of staff's consolidated exhibit, and that would
3 be those responses Numbers 8 through 12 of Sugarmill Woods'
4 first set of interrogatories?

5 MS. BRUBAKER: For clarity's sake, it's 8 and 12.

6 COMMISSIONER BAEZ: 8 and 12. I am sorry.

7 And you have also highlighted Number 27 and
8 Number 46, and Mr. Perry has gone ahead and highlighted 41.

9 Mr. Perry, I want to make sure it's 41 through 46, I
10 guess.

11 MR. PERRY: I believe it's 42 through 46.

12 COMMISSIONER BAEZ: 42 through 46. I'm sorry.

13 MR. PERRY: That would be JP-3 through JP-7.

14 COMMISSIONER BAEZ: And I guess that will launch us,
15 what may launch us into -- are those the only ones for FIPUG,
16 Mr. Perry?

17 MR. PERRY: Yes, sir.

18 COMMISSIONER BAEZ: Public Counsel?

19 MR. McGLOTHLIN: I had earlier identified 46. I
20 would like to add 43 to that, so I'll --

21 COMMISSIONER BAEZ: I think you're spoken for,
22 they're spoken for already. Mr. Wright.

23 MR. WRIGHT: Spoken for, Mr. Chairman.

24 COMMISSIONER BAEZ: Okay. You'll, you'll let us know
25 at that -- whenever it comes up which ones are spoken for in

1 your --

2 MR. WRIGHT: I agree with Public Counsel and FIPUG.

3 COMMISSIONER BAEZ: Okay. Very well. Mr. Twomey?

4 MR. TWOMEY: Same.

5 COMMISSIONER BAEZ: Mr. Sasso, is there anything that
6 hasn't been mentioned already that you all need to sort of take
7 out of --

8 MR. SASSO: No, Mr. Chairman.

9 COMMISSIONER BAEZ: Nothing? Okay. Very well.

10 Now let the record reflect that all the, all the
11 exhibits listed in what is identified as Exhibit 5, the
12 comprehensive exhibit list, be marked according to that
13 reflected in Exhibit 5, and that with the exception and without
14 objection, with the exception of items, part of Item 6, which
15 would be responses numbers 8 and 12, Progress Energy's
16 responses to Sugarmill Woods' first set of interrogatories,
17 with the exception of hearing Exhibit Number 27, hearing
18 Exhibit 42, 43, 44, 45 and 46, without objection, all other
19 exhibits except those that I've identified can be moved into
20 the record. And the objections to those exhibits will be heard
21 in order and in due course during the hearing.

22 Is there anything else that we need to -- did I get
23 it right, Jennifer?

24 MS. BRUBAKER: You did. You did wonderfully.

25 COMMISSIONER BAEZ: Great. Eventually I get some

things right, I think.

2 (Exhibits 5 through 46 marked for identification.)

3 (Exhibits 5, 6, except for noted portions, 7 through
4 26, and 28 through 41 admitted into the record.)

5 MS. BRUBAKER: One matter, and I wonder if this is
6 the perfect time to bring it up or not since we are talking
7 about those testimonies and all that we were able to stipulate,
8 to note that staff auditor Witness Jocelyn Stephens has been
9 stipulated to as a witness. My understanding, her testimony
10 will be entered in as stipulated, with the exception that
11 Progress, I believe, would also like to enter her deposition in
12 as part of that stipulation. If it's appropriate for them to
13 do that at this time, we can do that, or we can take it up
14 after the other witnesses have spoken.

15 COMMISSIONER BAEZ: Why don't, why don't we just go
16 through the witnesses, and then when Ms. Smith's (sic.) turn
17 would have come up, we can take up her, take her testimony or
18 her deposition. Okay?

19 MS. BRUBAKER: With that, the only other thing I'm
20 aware of at this time is that to the extent we have the
21 stipulated testimonies, that they be inserted into the record
22 as read, and I would move they be done so.

23 COMMISSIONER BAEZ: Can you identify which
24 testimonies those are for me, Ms. Brubaker?

25 MS. BRUBAKER: Certainly. They're the direct

1 testimonies of Mr. Lyash, Mr. McDonald, Ms. Rogers,
2 Mr. Portuondo, Mr. Wimberly, Mr. Rothschild, Mr. Majoros,
3 Ms. Brown and, of course, Ms. Stephens for staff, and
4 Mr. Stewart, and the rebuttal testimonies of Mr. Portuondo and
5 Mr. Wimberly.

6 MR. McWHIRTER: We object to the rebuttal testimony
7 of Mr. Portuondo until after we've had an opportunity to voir
8 dire him.

9 COMMISSIONER BAEZ: Very well. With the exception --
10 If there's no objection, with the exception of Mr. Portuondo's
11 rebuttal testimony, show all other direct and rebuttal prefiled
12 testimony of the witnesses as shown in the prehearing order
13 moved into the record as though read.

14 MR. WALLS: Commissioner.

15 COMMISSIONER BAEZ: I'm sorry. Apply brakes. Go
16 ahead, Mr. Walls.

17 MR. WALLS: I'm sorry. We did object to one of the
18 exhibits of Mr. Rothschild, and, of course, he addresses that
19 exhibit in his testimony. So we would have an objection to
20 that part of his testimony coming in.

21 COMMISSIONER BAEZ: What we're, what we're going to,
22 what we're going to do there is in the course, in the course of
23 taking up his testimony at the time when we make a ruling on
24 what the objections to, to the exhibit are, then we will have
25 to instruct somehow that the testimony gets, gets redacted

1 accordingly. All right? And you remind me of that. I'm sure
2 you will.

3 MS. CHRISTENSEN: Commissioner, I have one concern to
4 address with going ahead and entering all the prefiled
5 testimony at this time.

6 One of our witnesses does have, that I'm aware of,
7 some minor corrections to his testimony. And I'm not sure how
8 streamlining the testimony in at this point, how we're going to
9 make those corrections when the witnesses do take the stand,
10 because then our usual course, the witness takes the stand, we
11 make any corrections to the testimony, and then we move that
12 testimony in the record.

13 COMMISSIONER BAEZ: I'll tell you what, one person
14 complaining is a signal, and since two people complaining is a
15 trend, so we're going to belay, we're going to belay moving it,
16 okay, Ms. Brubaker, and we'll just take them up in order. At
17 this point I guess we can get ready for --

18 MS. BRUBAKER: There will be opening statements.

19 COMMISSIONER BAEZ: The opening statements, were they
20 per side or per party? I don't --

21 MS. BRUBAKER: I would need to double check what the
22 order says.

23 COMMISSIONER BAEZ: Is it per party? I think it's
24 per party.

25 MS. BRUBAKER: But I believe -- my understanding is

1 t's per party.

2 COMMISSIONER BAEZ: Very well. And it was set at 15
3 minutes.

4 MR. PERRY: Chairman Baez, before we get to opening
5 statements, I have two exhibits that I believe can be
6 stipulated to.

7 COMMISSIONER BAEZ: That's right, Mr. Perry.

8 MR. PERRY: There's a nonconfidential one and then a
9 confidential one which I have not distributed. I've discussed
10 these with Progress and the parties ahead of time and there are
11 no objections to my knowledge.

12 COMMISSIONER BAEZ: Assuming no objection -- and
13 that, Mr. Perry, that's the one that you distributed out here?

14 MR. PERRY: Yeah. The one that is labeled Composite
15 FIPUG Stipulated Exhibit Number 1 I would ask be marked as
16 Exhibit Number 47, I believe.

17 COMMISSIONER BAEZ: I have 47 on my list.

18 Show the Composite FIPUG Stipulated Exhibit Number 1
19 marked as hearing Exhibit Number 47.

20 (Exhibit Number 47 marked for identification.)

21 MR. PERRY: And there is a confidential one which I
22 provided to Progress Energy and which I'll provide to the court
23 reporter now, and I would ask that that be marked as Exhibit
24 Number 48.

25 COMMISSIONER BAEZ: Mr. Perry, can you identify that

1 one again, because I didn't hear you?

2 MR. PERRY: Yes. The -- give me one second, please.

3 COMMISSIONER BAEZ: Is that the confidential?

4 MR. PERRY: Yes. That would be composite FIPUG

5 Stipulated Exhibit Number 2, and that's confidential. And I'd
6 ask that it be marked as Exhibit Number 48, please.

7 COMMISSIONER BAEZ: Without objection, show FIPUG
8 Confidential Exhibit Number 2 marked as Confidential Exhibit
9 48.

10 (Exhibit 48 marked for identification.)

11 MR. PERRY: And I'd ask that both those be moved into
12 the record as well.

13 COMMISSIONER BAEZ: Without objection, show
14 stipulated Exhibits 47 and 48 moved into the record.

15 (Exhibits 47 and 48 admitted into the record.)

16 COMMISSIONER BAEZ: All right. If there's nothing
17 else, we're back on opening statements. As we had stated, it's
18 15 minutes per party. Rather generous at this late stage of
19 the morning, and I would urge you to be brief, be brilliant and
20 whatever else.

21 Mr. Sasso.

22 MR. SASSO: Thank you, Mr. Chairman, members of the
23 Commission. Excuse me for my voice today, but I'm also working
24 a cold.

25 COMMISSIONER BAEZ: It's going to be one of those.

1 MR. SASSO: Pardon me. We're pleased to be here
2 today to present our case in support of Progress Energy's
3 petition to recover excess storm costs totalling approximately
4 \$252 million.

5 I'd like to begin with some common ground. I believe
6 it's clear from the discussions earlier today that nobody
7 disputes or can dispute that the 2004 hurricane season in
8 Florida was catastrophic and unprecedented. Never before has
9 the state seen such a hurricane season. In the space of merely
10 six weeks Progress Energy's service territory was battered by
11 four hurricanes back to back.

12 How did the company respond? I believe there's
13 agreement on this, too, judging from the remarks earlier today.
14 The company's response was extraordinary. As the Commission
15 has heard in service hearing after service hearing as customers
16 have testified, company personnel worked tirelessly around the
17 clock at great personal sacrifice and sometimes personal peril
18 to restore power to the company's customers at the earliest
19 possible time. The company was at risk. The company suffered
20 impairment of revenues during this time and disruption of its
21 work and proceeded without regard to its own financial risk,
22 without advanced approval of its actions or its costs to do
23 what it took to get the customers back in service at the
24 earliest possible time. Again, the Commissioners have heard
25 this time and again from the company's customers.

1 In short, the company did the right thing, trusting
2 that the Commission would also do the right thing having heard
3 the evidence that we're going to present in this case.

4 We understand that the impact of these storms on the
5 company's customers was severe. They have paid a price. But,
6 again, as the customers testified again and again in the
7 service hearings, but for the fact that Progress Energy was
8 able to restore power swiftly and surely, the company's
9 customers would have suffered additional untold millions of
10 dollars in business losses and personal losses, not to mention
11 disruption and inconvenience.

12 Now how did the company account for its storm costs?
13 And that's the nub of this case over which most of the
14 discussion is going to occur in the ensuing days. From the
15 company's point of view this was a very straightforward matter.
16 The company used a methodology that's been in place in this
17 state for over ten years.

18 As the Commission is aware, on the heels of Hurricane
19 Andrew the IOUs in the state were faced with an untenable
20 situation. While third-party insurance was still available for
21 transmission and distribution to some extent, it had become
22 protracted (phonetic) and it became very expensive. And so the
23 IOUs petitioned this Commission for relief, a proposal to use a
24 self-insurance mechanism.

25 It's important as the Commission hears the testimony

1 over these next few days to remember that this proposal came at
2 the initiative of the utilities. It wasn't imposed upon them
3 by the Commission or at the instigation of customer groups.
4 And why is this important? Because the Commission needs to ask
5 as it hears this testimony, were the utilities proposing a
6 regime that would result in shareholders subsidizing storm
7 costs to the point where utilities would be forced to earn the
8 lowest possible authorized earning rate? Of course not. What
9 were the utilities proposing and what was approved by the
10 Commission? They were proposing a regime that mirrored
11 third-party replacement cost insurance and they were proposing
12 a win-win. They were proposing the same protection for the
13 company, but at a reduced cost to the customers compared to
14 what was then commercially available, which is a win-win.

15 The Commission approved this self-insurance proposal
16 in concept, but had some questions. Said, we don't know the
17 basis for your calculation of accruals to this proposed reserve
18 fund. We don't know how you plan to account for storm costs.
19 In fact, in the FPL order the Commission specifically said, we
20 want to know if you're going to book normal labor costs to this
21 reserve. We have some very specific questions, and we're going
22 to hold this docket open, we're going to hold the dockets open
23 in each of these cases, we're not going to approve the accrual
24 amounts that you suggested until you come back with some
25 studies addressing these questions and giving us answers. And

1 the utilities went off and came back with some studies which
2 they filed with the Commission and they answered these
3 questions. And the Commission accepted these studies and, on
4 the basis of those studies, approved the accrual amounts and
5 closed the dockets.

6 Now what did the utilities say in these studies?

7 Well, very specifically they proposed using an actual
8 restoration cost approach, and they proposed using a
9 replacement insurance cost approach, mirroring what they had
10 with the replacement cost insurance. They specifically
11 considered and addressed and ruled out an incremental cost
12 approach, which you're going to hear being advocated by
13 opposing witnesses in this hearing over the next couple of
14 days.

15 Why did they rule out incremental costs? Well, one,
16 they argued, and you're going to hear the witnesses on the
17 other side of this case agree, that during these emergency
18 circumstances the companies have to be able to administer their
19 accounting in the field. There's pandemonium. You need a
20 simple method to track and book storm costs. Incremental cost
21 accounting is not that method. It requires use of assumptions
22 and allocation methods that may differ from storm to storm,
23 it's cumbersome, it's infeasible, it will result in delays in
24 the review of storm cost petitions and many rate cases and
25 protracted proceedings, which is what we respectfully suggest

1 some of the opposing parties would require in this case. And
2 so the utilities recommended actual restoration costs and they
3 wanted this to mirror replacement cost insurance.

4 Now we understand from the position statements that
5 OPC and other intervenors are going to contend that the
6 discussion in these studies about replacement cost insurance
7 was tied to the idea of dovetailing self-insurance to
8 commercial insurance at some later date when that became
9 available. But we respectfully request that the Commission
10 review these studies when they come into evidence and we'll see
11 that that is not so. This was part of a number of rationales
12 that are compellingly applicable to this case just as much as
13 they were to the Hurricane Andrew storm costs at that time.

14 And at that time, as today, one of the points made by
15 Florida Power Corp was they have replacement cost insurance for
16 some facilities. They want treatment the same for all
17 facilities, including T&D.

18 Now what is the significance of this? The
19 significance of this is this has been the method that has been
20 in place in this state for ten years. Progress Energy and
21 other utilities have faithfully implemented this accounting
22 method and approach for ten years. They have based, they have
23 based their calculations of accruals that they've come to the
24 Commission for approval with to the reserve on this method,
25 they've based their draws against the reserve for intervening

1 hurricanes such as Erin, Opal, Josephine, Floyd, Harvey, Irene,
2 Gordon, Gabrielle and Henri on this method. This has all been
3 subject to Public Service Commission review in the accrual
4 dockets and in rate cases. So it should be no surprise that
5 Progress Energy entered the 2004 hurricane season with some
6 confidence that they knew what to do and how to do it, and that
7 is the way they did it. And we're before you now asking the
8 Commission to apply this methodology to the circumstances
9 before this Commission and to provide for recovery of the
10 excess storm costs over a two-year period using a recovery
11 clause. And I'm pleased to report we have more common ground
12 here. The parties are in agreement that to the extent a
13 recovery is appropriate, the mechanism we propose is
14 appropriate, namely a two-year surcharge.

15 So what is the dispute all about? The dispute
16 basically concerns the contention by the intervenors that the
17 recovery we seek should be reduced or limited primarily for
18 three reasons.

19 First, there's an argument that any recovery should
20 be reduced on account of the 2002 rate case stipulation entered
21 into among the parties at that time. The problem with this
22 argument is that rate case stipulation was entered into to
23 resolve a base rate proceeding, to resolve a dispute over what
24 base rates should be. And you're going to hear that opposing
25 witnesses in this case acknowledge, as they must, that the

1 costs that are at issue in this proceeding are volatile and
2 nonrecurring. In fact, Witness Sheree Brown, one of the
3 intervenor witnesses, said this cannot be recovered in a rate
4 case. It would have to be backed out in any test year. And so
5 we can't be left with a Catch 22 where we can't recover these
6 costs in base rates and we can't recover them in storm cost
7 recovery clause either. It is not fair or reasonable to
8 interpret the parties' rate case stipulation resolving a
9 dispute over base rates to foreclose a request to recover costs
10 that are not reasonably addressed in a base rate proceeding.

11 Now our base rate stipulation did address a cost
12 recovery clause in a limited respect. As the Commission may
13 recall, the stipulation provided for cost recovery for
14 Hines 2, the power plant coming online after the rate case was
15 going to be concluded. And the parties provided for limited
16 recovery of Hines 2 related costs through a cost recovery
17 clause. And the stipulation provides FPC will not use the
18 various cost recovery clauses to recover new capital items
19 which traditionally and historically would be recoverable
20 through base rates, except as provided in the paragraph dealing
21 with Hines 2. Well, this clause makes it all the more clear
22 that we're within our rights to ask for the recovery we're
23 seeking in this docket because we're not seeking recovery of
24 capital costs through this cost mechanism, nor are we seeking
25 the recovery of costs that are traditionally and historically

1 recoverable through base rates.

2 Second, the intervenors contend that Progress Energy
3 should have expensed a substantial portion of the excess storm
4 costs in 2004 to take them to the point where they'd be earning
5 no more than 10 percent ROE. This argument, as you will see
6 from the evidence in this case, is flawed for at least several
7 reasons.

8 First, this argument is precluded by the Commission's
9 rule dealing with the Storm Cost Reserve Fund. That rule
10 prohibits the utility from expensing storm costs in the year
11 incurred, and says instead they must be booked to the reserve
12 account.

13 At the time of the rate case stipulation the parties
14 did not propose to the Commission a waiver of that rule. In
15 approving the stipulation, the Commission did not agree to
16 waive that rule. And so it is untenable construction of that
17 rate case stipulation that it authorizes a departure from that
18 rule.

19 Second, as I've already explained, the rate case
20 stipulation dealt with base rates, not these types of costs.
21 So it is not sensible to apply any aspect of that rate case
22 agreement to these costs.

23 Finally, the intervenors treat this 10 percent figure
24 in the rate case stipulation as a ceiling on earnings when it
25 is a floor, is a floor below which any reduction in earnings

1 would trigger the right of the utility to request an increase
2 in base rates. Never has this Commission, even when dealing
3 with accruals which are addressed through base rates, required
4 utilities to push down earnings to subsidize funds to this
5 accrual account to a level where they'd be earning at the
6 bottom of any earning span, let alone in circumstances where
7 the utility had stepped up to the bar to exercise extraordinary
8 efforts to deal with a crisis.

9 Finally, the intervenors contend that Progress Energy
10 must use incremental accounting rather than actual restoration
11 cost accounting. Again, this approach has never been used in
12 this jurisdiction. It was explicitly considered and rejected
13 by the IOUs and, we submit, by the Commission in connection
14 with the proceedings surrounding Hurricane Andrew, and a
15 radical change of this nature at this time, we submit, would
16 amount to retroactive ratemaking.

17 Further, for all the reasons identified and discussed
18 by the utilities at the time of the Hurricane Andrew related
19 proceedings it makes no sense. Incremental cost accounting
20 requires looking at revenue impairment issues, backfill work,
21 backup work. And the reason why the intervenors, you will see,
22 are interested in this approach in this case is because the
23 company did not set out in 2004 to attempt to track those
24 incremental costs. And so they're dealing with it in an
25 abstract way. The fact is if you try to corral all those

1 incremental costs, there is no assurance that it's a better
2 deal for the customer.

3 The FPL study in 2000, I'm sorry, in 1993
4 demonstrated that the incremental cost approach would result in
5 a price tag for customers for Hurricane Andrew totalling
6 \$290 million; whereas, actual restoration costs would expect to
7 be \$277 million. So if you properly take into account all the
8 different impacts of the storm in an incremental cost approach,
9 the customers may actually be harmed.

10 So we would urge the Commission to stay the course.
11 Bottom line is that when faced with an extraordinary set of
12 circumstances, the company provided extraordinary service. We
13 believe the evidence is going to show over the next couple of
14 days that the company properly coped with these crises,
15 properly accounted for its costs in doing so, and its request
16 for cost reimbursement in the manner we seek is entirely
17 appropriate as well. And based on the evidence in this
18 hearing, at the close of the case we're going to come back to
19 the Commission and ask the Commission to grant the company's
20 petition in full. Thank you.

21 COMMISSIONER BAEZ: Thank you, Mr. Sasso.

22 Mr. McGlothlin.

23 MR. MCGLOTHLIN: Joe McGlothlin for the Office of
24 Public Counsel. Our office's position in this case is that the
25 Commission should reduce Progress Energy's request for

1 authority to recover \$252 million from customers by more than
2 half. And we will present evidence that will flesh out the
3 individual adjustments that lead to that overall position, but
4 I want to use my opening statement to speak more broadly.

5 In broad terms, the Commission will make two kinds of
6 decisions in this docket. First, the Commission will decide
7 what costs properly belong in the Storm Damage Reserve, what
8 kinds of costs and how much.

9 After it answers that question, the Commission will
10 also address this one. Should the Commission grant Progress's
11 request to recover any negative balance in the storm reserve
12 that the Commission identifies in a manner that insulates
13 Progress's earnings from the effects of the 2004 storms?

14 I'm going to take these questions in reverse order
15 during my opening statement because the dollars involved with
16 this hold harmless concept advanced by Progress Energy in this
17 case are far more significant than the adjustments to the Storm
18 Damage Reserve balance that the parties will be debating during
19 the hearing.

20 In fact, this overall question alone, the question
21 involving the hold harmless argument, we believe, would, is, is
22 worth about \$100 million or more in terms of potential
23 adjustments to the company's request.

24 The Commission should reject this hold harmless
25 effort for two compelling reasons. First, the Commission

1 ejected similar efforts in the past, and the reasoning that
2 he Commission articulated at that time remains sound policy.
3 imply put, the Commission got it right the first time out and
4 here's no reason to change it.

5 Secondly, the Commission should reject Progress
6 Energy's effort because the result Progress Energy wants is
7 precluded by the terms of the stipulation that Progress Energy
8 and parties negotiated and, and signed in 2002 and that the
9 Commission approved by order.

10 A brief history is in order because a good handle on
11 how we got to this point explains much about the contentions
12 that are being put forward in the hearing.

13 After Hurricane Andrew leveled much of Florida in
14 1992, the cost and availability of commercial insurance on
15 transmission and distribution assets changed dramatically.
16 Both Florida Power & Light Company and Progress Energy
17 petitioned the Commission for approval of self-insurance
18 programs, and both at that time put forward this concept of a
19 cost recovery mechanism designed to accomplish the same type of
20 dollar-for-dollar indemnification that Progress Energy proposes
21 in this case. The Commission denied both initiatives.

22 I will, I will grant you that in its orders entered
23 in that time frame the Commission was careful to keep its
24 options open and made it clear that the utilities were free to
25 ask again in the future. But in the orders entered in the 1993

1 time frame approving the self-insurance approach but rejecting
2 the indemnification mechanism, the Commission articulated three
3 themes which still provide the appropriate regulatory framework
4 for the resolution of this overarching issue in this docket.

5 The first thing, the Commission said to grant such a
6 dollar-for-dollar recovery mechanism would be to
7 inappropriately transfer all risk of storm damage to the
8 customers.

9 Theme 2, a utility should not have to earn less than
10 a reasonable return as a result of storm losses.

11 Theme 3, the Commission has an array of options from
12 which to choose to fashion a result that is appropriate for the
13 circumstances of a given case. It can permit the utility to
14 defer costs and amortize them over time without any additional
15 recovery in the form of a surcharge or anything other than base
16 rates, it can permit the utility to collect some of the cost
17 from customers or it can permit the utility to collect all of
18 them, depending on the circumstances of a given case.

19 It's clear from the Commission's discussion that the
20 adequacy of the utility's earnings at the time would be the
21 determining factor that should be considered when arriving at a
22 resolution of a request for additional recovery.

23 Now in this case, Progress Energy has said we want to
24 collect the entire amount, which they calculate at
25 \$252 million, from customers, and they contend that this

1 approach is one that balances the equities between the company
2 and the customers. But as you listen to the evidence, consider
3 which party's proposal falls within the boundaries that the
4 Commission set up at the outset. By boundaries, I mean on the
5 one hand it's inappropriate to put all of the risk on
6 customers, and on the other hand it's inappropriate to expect
7 the utility to earn less than a fair return.

8 We are going to submit testimony that advocates a
9 sharing of the responsibility, and that sharing is tied to the
10 10 percent return on equity that is found both in the
11 stipulation and in testimony of our witness James Rothschild.

12 That brings me to the 2002 settlement. In that
13 settlement, the parties agreed to a revenue sharing mechanism
14 that would take the place of an authorized range of return on
15 equity. In that agreement, in return for the opportunity to
16 earn on the upside without limitation, Progress Energy gave up
17 its right to ask for a base rate increase, except for the one
18 trigger that appears in the document. The trigger is this -- I
19 said FPC, and it was FPC at the time, but you understand we're
20 talking about Progress Energy. If Progress Energy's retail
21 base rate earnings fall below a 10 percent return on equity as
22 reported on an FPSC adjusted basis in surveillance reports,
23 then FPC may petition the Commission to amend its base rates,
24 notwithstanding the other commitments in the agreement.

25 In other words, based on the stipulation, only if

1 unusual expenses caused Progress's return on equity to fall to
2 .0 percent could Progress petition to increase base rates. Now
3 that's in place and along comes the 2004 storms, and Progress
4 Energy wants to put in a request again for the
5 dollar-for-dollar indemnification. But there's a problem, if
6 you can call it that. Because notwithstanding the 2004 storm
7 damage, at the time Progress Energy was making in the range of
8 12.5 percent return on equity.

9 What's the utility to do? Well, we'd submit that by
10 labeling its request a cost recovery clause, it's trying to
11 avoid its obligations under the agreement.

12 We further think that this is a transparent attempt
13 to avoid the obligations. Recall that the Commission had
14 rejected any cost recovery mechanism in 1993. There was no
15 cost recovery clause for storm related damages in place at the
16 time of the stipulation. There was nothing in place at the
17 time of the storms. And when you read the stipulation in
18 context, it's clear that the cost recovery clauses to which
19 Mr. Sasso alluded were the ones in existence at that time. You
20 will hear Progress Energy's witness say that the 10 percent
21 trigger was intended to apply only if Progress Energy made a
22 severe miscalculation with respect to the kinds of costs
23 typically covered by base rates.

24 Again, there's a problem. That's not what the
25 agreement says. The Commission is called on in this case to

1 enforce the plain and unambiguous language of the stipulation
2 against Progress Energy's effort to avoid it or to rewrite it.
3 And there's good reason to do so.

4 Our witness James Rothschild will testify that the
5 10 percent return on equity remains a reasonable rate of
6 return. For that reason, there's no occasion for the
7 Commission to be concerned that circumstances have changed such
8 that it should depart from the terms of the stipulation.
9 Mr. Rothschild will also testify that investors are paid to
10 assume risks, and it would be unfair to place all of the risks
11 of storm losses on customers. And if that sounds familiar,
12 it's because we've come full circle. And Mr. Rothschild will
13 provide record evidence for the very rationale that the
14 Commission articulated properly in 1993.

15 Turning very briefly to the question of the costs
16 that belong in the Storm Damage Reserve. Our fundamental view
17 is that the storm reserve should be reserved, if you will, for
18 the incremental and extraordinary costs caused by the storm,
19 caused by the storms, costs beyond those that the utility would
20 have experienced had the storms not occurred. And there's even
21 a degree of agreement between Progress Energy and our office
22 with respect to the overall cost picture.

23 With respect to the capital costs, Progress Energy
24 agrees that it will and has to this point been calculating the
25 normal costs that it would incur in installing replacement

1 plant and booking that to the plant-in-service accounts. It
2 will identify and charge to the storm reserve only the
3 extraordinary and incremental costs above the normal costs and
4 classify that as extraordinary O&M. We concur with that
5 conceptual approach. At issue is only whether Progress Energy
6 has identified the appropriate value, the numerical value that
7 belongs with that approach.

8 But we disagree with the approach that Progress
9 Energy has taken to O&M because it's very different. There
10 Progress Energy wants to place in the storm reserve every cost
11 incurred during the storm repair periods, even without taking
12 into account the level of costs it would have incurred had the
13 storms not, not occurred.

14 Progress Energy will refer to its 1993/1994 study,
15 but the fact is that the Commission never approved the
16 accounting methodology that Progress Energy wants to employ in
17 this case. Also, the study was premised on the assumption that
18 Progress Energy would continue to maintain insurance. Progress
19 Energy contended in the study that to require to adopt
20 accounting inconsistent with replacement insurance would impose
21 administrative burdens, but today Progress Energy has no
22 insurance and there's no longer any streamlining to be gained
23 by dovetailing the accounting mechanism with the manner in
24 which insurance policies are implemented when replacement cost
25 is the basis.

1 There's another reason why you should not adopt that.
2 When the replacement cost bill was presented to an insurance
3 company, the insurance company only pays those costs once. But
4 when you try to transpose that situation and present a
5 replacement cost bill to customers, customers are called on to
6 pay some of those costs a second time. It's for that reason
7 that our witness Mr. Majoros will state that replacement costs
8 may serve the insurance scenario quite well, but it's a misfit
9 when applied to customers.

10 For that reason, we are going to recommend
11 adjustments to the O&M portion of this cost recovery design to
12 ensure that customers are not asked to pay twice for the same
13 costs. Thank you.

14 COMMISSIONER BAEZ: Thank you, Mr. McGlothlin.

15 (Transcript continues in sequence with Volume 2.)
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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER


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I, LINDA BOLES, RPR, Official Commission
reporter, do hereby certify that the foregoing proceeding was
heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically
reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
transcript constitutes a true transcription of my notes of said
proceedings.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
connected with the action, nor am I financially interested in
the action.

DATED THIS 31st DAY OF MARCH, 2005.


LINDA BOLES, RPR
FPSC Official Commission Reporter
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