

ORIGINAL

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**Subject:** Docket No. 041272-EI  
**Attachments:** Motion to strike.doc61705.doc

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1. **Docket Number: 041272-EI; Progress Energy Florida, Inc.'s Petition for Approval of Storm Cost Recovery Clause for Extraordinary Expenditures Related to Hurricanes Charley, Frances, Jeanne, and Ivan**
2. Attached for filing on behalf of Office of Public Counsel is OPC's Motion to Strike Progress's Letter Regarding Staff's Recommendation.
3. There are a total of three (6) pages for filing.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Progress Energy Florida, Inc.'s Petition for Approval of Storm Cost Recovery Clause for Extraordinary Expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan

Docket No. 041272-EI

Filed: June 17, 2005

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**MOTION TO STRIKE PROGRESS'S LETTER REGARDING STAFF'S RECOMMENDATION**

The Citizens of the State of Florida (Citizens), by and through undersigned counsel, pursuant to Rule 28-106.204, Florida Administrative Code, hereby file their Motion to Strike the letter from Progress's Javier Portuondo to Tim Devlin, Director of the Commission's Division of Economic Regulation, dated June 16, 2005. In support of its Motion to Strike, Citizens state that:

**SUMMARY**

The letter sent by Progress to Commission staff seeking an additional recommendation to "clarify" how expenses identified by Staff as inappropriate for inclusion in the storm damage reserve should be recognized by the company is procedurally improper. A letter to the Staff is not the appropriate means with which to seek clarification, because at this point the Commission has not acted. Moreover, in this instance the effect of the letter is not to "clarify," but to advocate a result other than that which would flow from adoption of the Staff's recommendation. Because it is procedurally inappropriate, the Commission should strike the letter and instruct that it be disregarded.

## ARGUMENT

1. The Commission held an administrative hearing in this docket on Progress's Petition for Approval of Storm Cost Recovery Clause on March 30, 31, and April 1, 2005, as well as held service hearings through out Progress's territory in the month of March. At these hearings, all parties had the opportunity to present testimony and conduct cross-examination of the witnesses. In addition, the parties had the chance to present a summary of their case in their post hearing briefs filed on April 26, 2005.

2. On June 14, 2005, Commission Staff (Staff) filed its post hearing recommendation on Progress's Petition. The recommendation is currently scheduled to be heard at the June 21, 2005, Agenda Conference. Since this is a post hearing decision, participation at this Agenda Conference is limited to Commissioners and the Staff.

3. On June 16, 2005, Mr. Javier Portuondo, Progress's Director of Regulatory Services, sent a letter to Tim Devlin, the Commission's Director of the Division of Economic Regulation. In that letter, Mr. Portuondo asks that the Commission file a recommendation to "clarify" the manner in which the company would account for those expenses that, according to Staff's recommendation, are inappropriate for inclusion in the storm damage reserve. Then Mr. Portuondo outlines the accounting treatment of those amounts that Progress prefers.

4. The letter is an inappropriate communication. If in fact there was an issue that required clarification, the appropriate mechanism for seeking clarification is a Motion for Clarification after the order is issued on the Commission's vote. At best seeking "clarification" prior to a Commission vote post hearing is premature since it is unknown as to how the Commission will decide the issues.

5. However, contrary to Mr. Portuondo's claim, the import of the letter is not to "clarify" Staff's recommendation. Under applicable accounting rules and standards, including SFAS 71, there is nothing ambiguous or unclear with respect to the accounting measures that Progress would be required to take to implement a decision that incorporates Staff's recommendation. In the body of the letter, Mr. Portuondo seeks to persuade the Staff to adopt a different position from the position that necessarily and unambiguously flows from the implementation of Staff's current post hearing recommendation. Thus, the letter is an effort to alter the current Staff recommendation and potentially introduce information outside the record into the Commission's decision making process.

6. Moreover, in any given case, it is likely that any party, including Citizens, would wish the ability to redirect one or more aspects of the Staff's recommendation before the Commission makes its decision based on that recommendation. For obvious reasons, to allow parties to provide additional commentary, written or oral, would result in an unmanageable process, whereas to allow one party to do so would result in an unfair process. To maintain the fairness and integrity of its procedures, the Commission should strike the letter. Neither the Staff nor the Commission should consider the letter in the formulation of the recommendation and decision in this docket.

Wherefore, the Citizens request that the Commission grant its Motion to Strike.

Dated this 17<sup>th</sup> day of June, 2005.

Respectfully submitted,

Harold McLean  
Public Counsel

s/Patricia A. Christensen  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Office of Public Counsel's Motion to Strike Progress's Letter Regarding Staff's Recommendation has been furnished by electronic and U.S. Mail on this 17<sup>th</sup> day of June, 2005, to the following:

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Associate Public Counsel

