

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Request to exclude 4/11-12/04 outage event from annual distribution service reliability report by Progress Energy Florida, Inc.

DOCKET NO. 040792-EI
ORDER NO. PSC-04-1268-PAA-EI
ISSUED: December 22, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR RULE WAIVER AND
GRANTING REQUEST TO EXCLUDE OUTAGES FROM
ANNUAL DISTRIBUTION SERVICE RELIABILITY REPORT

BY THE COMMISSION:

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

Background

Rule 25-6.0455, Florida Administrative Code, requires each investor-owned electric utility to file annually a Distribution Service Reliability Report containing data that this Commission uses to assess changes in distribution reliability. Under subsection (2) of the rule, a utility may exclude specified outage events, such as a storm named by the National Hurricane Center, a tornado recorded by the National Weather Service, ice on lines, or an extreme weather event causing activation of the county emergency operation center. In addition, under subsection (3) of the rule, an outage event not specifically enumerated in subsection (2) may be excluded if the utility demonstrates that the outage was not within the utility's control and that the utility could not reasonably have prevented the outage.

On July 27, 2004, Progress Energy Florida, Inc. (Progress), formerly Florida Power Corporation (FPC), filed a request for exclusion of outages associated with a severe weather system on April 11 and 12, 2004, pursuant to Rule 25-6.0455(3), Florida Administrative Code. In conjunction with its request for exclusion, Progress filed a petition seeking a variance or

DOCUMENT NUMBER-DATE

13397 DEC 22 04

FPC-COMMISSION CLERK

waiver from the portion of Rule 25-6.0455(3) that requires exclusion requests to be filed within 30 days of the outage event for which an exclusion is requested. Notice of Progress' rule waiver petition was published in the Florida Administrative Weekly on August 13, 2004. We received no written comments concerning Progress' rule waiver petition.

We have jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes.

Rule Waiver Petition

Progress requests a one-time, temporary waiver of the provision in Rule 25-6.0455(3), Florida Administrative Code, that requires a utility's request to exclude an outage event to be filed within 30 days of the outage event. In its petition, Progress states that it experienced severe weather conditions across its service territory on April 11 and 12, 2004, that caused extensive and widespread service interruptions to its customers. Progress asserts that it was not aware of the existence of the weather phenomenon known as a Mesoscale Convective System or Complex, until it reviewed Florida Power & Light Company's (FPL) request in Docket No. 040449-EI to exclude outages related to such a system passing through FPL's service territory on April 13, 2004. Progress asserts that it inquired into the nature of the weather system it had experienced based on the similarity between the characteristics of that system and the system described in FPL's request. Progress asserts that the occurrence of such a phenomenon in the deep Southeastern region of the country is extremely rare and, in fact, no previous occurrence in Florida has ever been recorded by the National Weather Service (NWS).

Progress states that its initial inquiry consisted of a search of several websites of the NWS and the National Oceanographic and Atmospheric Administration (NOAA). Progress states that while this search yielded no information that classified or characterized the weather system it experienced on April 11 and 12, the company continued to monitor these sources. Progress states that it then began to contact NWS representatives directly, but that repeated calls went unreturned over an extended period. Progress asserts that it ultimately retained the services of Weather Services International (WSI), a forensic meteorological consulting firm, to investigate the weather system. WSI reported to Progress that, based on infrared satellite photographs and meteorological data from NWS and NOAA, it determined that two separate but related Mesoscale Convective Systems had crossed Progress' service territory on April 11 and 12. Progress states that it immediately began to prepare its outage exclusion request based on WSI's report. Because of the time that had elapsed since the outage events occurred, Progress seeks a one-time, temporary waiver of the 30-day filing period specified in Rule 25-6.0445(3).

Progress asserts that Rule 25-6.0455 in general, and subsection (3) in particular, implement a number of specific statutory provisions from Chapter 366 that collectively establish this Commission's broad authority over the reliability of service provided by electric utilities. Progress notes that this Commission, in approving our staff's recommendation to adopt the current version of Rule 25-6.0455, recognized that "the information required by the revised rules will enable the Commission to better track reliability and quality of service and to better measure improvement." Further, with respect to subsection (3) of the rule, Progress notes this Commission's conclusion that "[t]he purpose of allowing the utility to exclude from its report an

outage event over which it has no control and cannot reasonably prevent is to ensure that the reliability report fairly represents the quality of service the utility delivers to its customers.” Progress contends that granting its requested rule waiver will achieve the statutory purpose of allowing this Commission to evaluate a utility’s performance in providing reliable service by allowing us to consider whether the outage events of April 11 and 12 were beyond the control and reasonable ability of Progress to prevent.

Progress further contends that a rigid application of the 30-day filing period required by the rule would impose a hardship on Progress by denying it the opportunity to have this significant outage event considered on its merits. Progress also contends that application of the rule would be contrary to basic fairness because the additional time required to file the exclusion request has not and will not prejudice any potential party’s interests nor adversely impact our ability to thoroughly consider the merits of the request. Progress asserts that an inflexible application of the rule would penalize Progress because of the time required to develop the information necessary to submit a proper filing concerning this unusual weather event.

Section 120.542(1), Florida Statutes, provides a two-pronged test for determining when waivers and variances from agency rules shall be granted:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

In view of this standard, we grant Progress’ rule waiver petition. We find that the purpose of the statutes underlying Rule 25-6.0455 will be achieved if the waiver is granted and that application of the rule would create a substantial hardship to Progress.

Purpose of the Underlying Statutes

Rule 25-6.0455 was promulgated under the authority of Section 366.05(1), Florida Statutes. This section provides this Commission the power, among other things, to prescribe standards of quality and measurement. We use the information gathered through these reports in exercising our jurisdiction under Section 366.04(5), Florida Statutes, over the maintenance of a coordinated electric power grid throughout Florida to assure a reliable source of energy for Florida. We also use this information to help determine adequacy and value of service in the context of rate-setting pursuant to Section 366.06, Florida Statutes.

The provisions of Rule 25-6.0455 are intended to ensure that utilities' distribution service reliability is fairly measured by allowing for the exclusion for certain outage events beyond the utilities' control and outside of their ability to reasonably prevent. We find that granting Progress' rule waiver petition will achieve this end and the purpose of the statutes noted above by allowing us to consider whether exclusion of the April 11 and 12 outage events experienced by Progress will fairly and accurately reflect the quality of service provided by Progress.

Substantial Hardship / Principles of Fairness

We do not agree with Progress' contention that application of the 30-day filing period to Progress will violate principles of fairness. For purposes of a rule waiver or variance, principles of fairness are violated when the literal application of the rule affects a particular person in a manner significantly different from the way it affects similarly situated persons who are subject to the rule. Progress has not explained how application of the rule will affect Progress in a manner significantly different from the way it affects any other utility subject to the rule.

We do agree, however, with Progress' contention that application of the 30-day filing period to Progress will create a substantial hardship. Strict application of the 30-day filing period specified in Rule 25-6.0455(3) would preclude Progress from having the opportunity to ask this Commission for permission to exclude certain outage events from its reliability reports in a manner that Progress believes would fairly and accurately reflect its quality of service.

We note that FPL was able to identify this weather phenomenon that affected its service territory on April 13, 2004, and file a timely request to exclude the related outages. Accepting Progress' assertions that it could not get a response from the NWS concerning the nature of the weather event that affected its system, we believe the delay in Progress' request was not unreasonable. It appears that Progress took reasonable steps to investigate the nature of the weather phenomenon that affected its system on April 11 and 12.

For the reasons set forth above, we grant Progress' petition for a one-time, temporary waiver of the 30-day filing requirement in Rule 25-6.0455(3), Florida Administrative Code. Progress has demonstrated that the waiver it requests will achieve the purpose of the statutes underlying the rule and that application of the rule would create a substantial hardship for the company.

Request for Exclusion of Outages

As discussed in detail below, we grant Progress' request for exclusion of outages because Progress has demonstrated that:

1. A unique severe weather event occurred across its service territory beginning at 6:00 p.m. on April 11 and extending through midnight on April 12, 2004;
2. The weather event caused the storm-related outages that the company is seeking to exclude; and

3. The resulting outages were not within the utility's control and could not reasonably have been prevented.

Progress has demonstrated the occurrence of a severe weather event, as described in detail above. According to Progress, the severe weather it experienced on April 11 and 12 is an extremely rare weather system with no known previous occurrence in Florida. Progress inquired into the nature of the weather system it had experienced based on the similarity between the characteristics of that system and the system described in FPL's outage exclusion request in Docket No. 040449-EI. Progress asked its meteorological consultant, WSI, to demonstrate the uniqueness of the weather system. WSI reviewed the available weather data and found indications of "wake lows," which are rare meteorological events associated with high winds, across Progress' service area. The first wake low event that crossed Progress' system occurred on April 11. On April 12, Progress' system experienced a second, smaller wake low event that developed under similar weather conditions. Review of WSI's forensic meteorological report and Progress' outage data leads us to believe that a unique, severe weather event did occur across Progress' service area on April 11 and 12, 2004.

According to Progress' petition, over the 30-hour period beginning 6:00 p.m. on April 11 through midnight on April 12, the severe weather system resulted in an estimated total of 5,099,410 Customer-Minutes of Interruption (CMI). Dividing this CMI by the number of customers at end of period (1,538,023 customers as of October 2004) equates to a System Average Interruption Duration Index (SAIDI) of 3.33 minutes. SAIDI represents average minutes of interruption per customer and is one measure used to assess overall reliability performance. In response to a request from our staff, Progress provided revised data on November 19, 2004. The revised data show a total of 4,938,163 CMI over the 30-hour period. Out of this revised total CMI, Progress removed 738,229 CMI that were not likely to be storm-related, resulting in 4,199,934 CMI reported by Progress as storm-related. Based on this revised CMI total and the 52,004 Customer Interruptions experienced, Progress' revised SAIDI impact of the weather event is 2.73 minutes.

We believe that Progress, in its revised data, has appropriately excluded only those outages that were caused by the weather event, consistent with Rule 25-6.0455. In addition, Progress has indicated that its trimming operations for all of its feeders were up to date with the utility's planned trim cycle as of April 11, 2004. Our review of the available outage data immediately before and after the weather event shows no indications of systemic increase in outage levels due to factors within Progress' control. Therefore, we find that Progress has demonstrated that the severe weather event of April 11 and 12 is the cause of the outages that the company is seeking to exclude.

Progress reported that its restoration efforts for this weather event involved the mobilization of all available personnel and equipment, including 147 contract line personnel. These personnel consisted of 80 native and 67 off-system line contractors. Progress stated that the mobilization of crews and equipment, management, supervision, and support began in the evening of April 11, and work was not completed until Tuesday, April 13.

There are similarities between Progress' request and FPL's request in Docket No. 040449-EI. In both cases, the weather events were sufficiently severe to cause high levels of damage across large geographical areas and appear unique in comparison to outage events that historically have not been excluded from the utilities' Annual Distribution Service Reliability Reports. In both cases, the utilities provided evidence that reasonable service restoration actions had been taken. We find that Progress has demonstrated that the outages resulting from these severe weather events were not within its control and could not reasonably have prevented by Progress. Thus, the outage events qualify for exclusion under Rule 25-6.0455(3).

Consistent with our decision on FPL's request in Docket No. 040449-EI, Progress shall file its 2004 Annual Distribution Service Reliability Report with and without the exclusions authorized by this order to enable assessment of trends in Progress' distribution reliability indices. In matters of significant financial implications such as rate cases, we have considered factors such as data quality to assess whether a particular reported index indicates the best representation of actual performance. We believe that requiring Progress to file its report with and without the exclusions authorized herein will enable assessment of the impact of exclusion under Rule 25-6.0455(3) to the trends in distribution reliability indices.

Based on the foregoing, it is

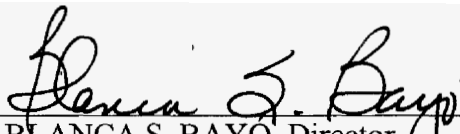
ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s petition for a one-time temporary waiver of the filing deadline specified in Rule 25-6.0455(3), Florida Administrative Code, is granted. It is further

ORDERED that Progress Energy Florida, Inc.'s request to exclude from its 2004 Annual Distribution Service Reliability Report service interruptions that resulted from a severe weather system on April 11 and 12, 2004, is granted as set forth in the body of this order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd day of December, 2004.


BLANCA S. BAYO, Director
Division of the Commission Clerk
and Administrative Services

(SEAL)

WCK

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 12, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.