

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-05-0832-FOF-EI
ISSUED: August 16, 2005

ORDER VACATING AUTOMATIC STAY

On July 14, 2005, the Commission authorized Progress Energy Florida, Inc. (Progress or utility) to collect a temporary surcharge for extraordinary storm costs incurred during the 2004 hurricane season by Order No. PSC-05-0748-FOF-EI (Final Order). The Office of Public Counsel (OPC) and the Florida Retail Federation each filed a Notice of Administrative Appeal of the Final Order on August 12, 2005. Pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, the Notice of Appeal by OPC operates as an automatic stay pending review by the Florida Supreme Court. On August 15, 2005, Progress filed its Motion to Vacate Automatic Stay pursuant to the appellate rule and Rule 25-22.061, Florida Administrative Code.

Rule 25-22.061(3)(a) provides that when an appealed order involves a rate increase, the Commission shall vacate an automatic stay upon motion by the utility and the posting of a good and sufficient bond or corporate undertaking. Progress argues that the Commission must vacate the automatic stay by operation of Rule 25-22.061(3)(a). Progress alleges that its customers are paying an increase for their electric service even if their base rates were not increased, and accordingly the Final Order falls under the purview of Rule 25-22.061(3)(a). In addition, Progress states that it will collect the temporary surcharge subject to refund, and submitted as Exhibit A to its motion an executed corporate undertaking for "all amounts collected under the approved storm recovery charge subject to potential refund as the Commission may order subsequent to the outcome of the Office of Public Counsel's appeal" of the Final Order. Finally, Progress argues that it should be allowed to collect the temporary surcharge now so that it will have the financial capability to respond to future storms.

Having reviewed Rule 9.310(2), Florida Rules of Appellate Procedure, and Rule 25-22.061, Florida Administrative Code, I find that Rule 25-22.061(3)(a) mandates that the Commission must vacate an automatic stay upon the utility's request when the order on appeal involves an increase in rates. Rule 25-22.061(5) further allows the chairman or prehearing officer to rule upon the utility's motion to vacate. I also find that Progress' motion and corporate undertaking meet the requirements of Rule 25-22.061(3)(a). Accordingly, Progress' motion is granted based upon the condition that the monies collected will be held subject to refund with interest under the terms of the attached corporate undertaking.

In no instance shall the maintenance and administrative costs associated with the potential refund be borne by the customers. These costs are the responsibility of, and shall be borne by, the utility. An account of all monies received as a result of the lifting of the automatic

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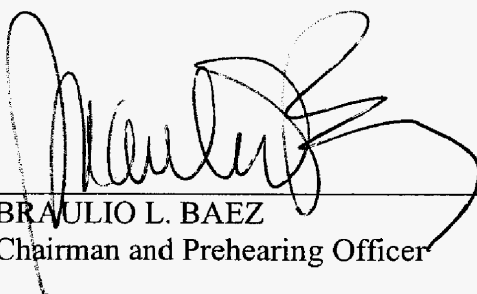
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stay shall be maintained by the utility. This account must specify by whom and on whose behalf such monies were paid. If a refund is ultimately required, it shall be paid with interest calculated pursuant to Rule 25-6.109(4), Florida Administrative Code.

It is therefore

ORDERED by Chairman Braulio L. Baez, as Chairman and Prehearing Officer, that the automatic stay is hereby vacated based upon motion and the corporate undertaking filed by Progress Energy Florida, Inc.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 16th day of August, 2005.


BRAULIO L. BAEZ
Chairman and Prehearing Officer

(S E A L)

MAH

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.

Any party adversely affected by this order, which vacates an automatic stay, may request review of the order by motion filed with the Florida Supreme Court pursuant to Rule 9.310(f), Florida Rules of Appellate Procedure.



H. William Habermeyer, Jr.
President and Chief Executive Officer
Progress Energy Florida, Inc.

August 15, 2005

Mr. Braulio Baez
Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

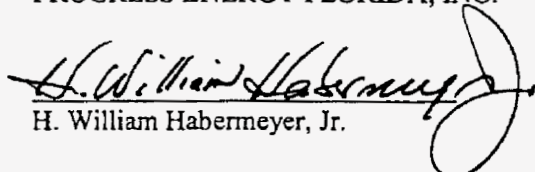
Re: Docket Number 041272
Storm Cost Recovery Subject to Refund

Dear Mr. Baez:

In connection with Florida Public Service Commission ("Commission") action taken on July 14, 2005 in Docket No. 041272-EI, Progress Energy Florida, Inc. hereby submits this Corporate Undertaking for all amounts collected under the approved storm recovery charge subject to potential refund as the Commission may order subsequent to the outcome of the Office of Public Counsel's appeal of Order No. PSC-05-0748-FOF-EI.

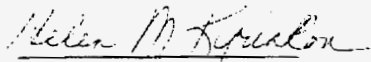
Sincerely,

PROGRESS ENERGY FLORIDA, INC.

By: 
H. William Habermeyer, Jr.

Title: President and Chief Executive Office

SWORN TO AND SUBSCRIBED before me this 15 day of August, 2005.


Notary Public

Printed name: Helen M. Kyriakou

My Commission Expires: 10/24/2009

P.O. Box 14042
MAC - CX2C
St. Petersburg, FL 33733

TPA#2060595.1



Helen M. Kyriakou
Commission # DD455582
Expires October 24, 2009
Bonded Troy Fae - Insurance, Inc. 800-385-7019

EXHIBIT A