

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request of Progress Energy
Florida to exclude an Outage Event on
April 11 and 12, 2004 from its Annual
Distribution Service Reliability Report.

Docket No. 040792-EI

Submitted for filing:
July 27, 2004

**PETITION OF PROGRESS ENERGY FLORIDA FOR WAIVER
OF THE 30-DAY FILING REQUIREMENT IN RULE 25-6.0455(3)**

Progress Energy Florida, Inc. (Progress Energy or the Company), pursuant to Section 120.542, F.S., and Rule 28-104.002, F.A.C., hereby petitions the Florida Public Service Commission (“the Commission”) for a one-time temporary waiver of the provision in Rule 25-6.0455(3), F.A.C., that a request by a utility to exclude an Outage Event from its Annual Distribution Service Reliability Report must be filed “within 30 days of the Outage Event for which an exclusion is being requested.” Progress Energy seeks a waiver of this provision in order that it may file and the Commission may consider the Company’s request proffered with this petition to exclude an Outage Event that occurred on April 11 and 12, 2004. In support of its waiver petition, Progress Energy states as follows:

Introduction

1. Progress Energy is a public utility subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes. The Company’s principal place of business is located at 100 Central Avenue, St. Petersburg, Florida 33701.

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PROGRESS ENERGY FLORIDA

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2. All notices, pleadings and correspondence required to be served on Progress Energy should be directed to:

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Background

3. As is more fully described in the accompanying Request to Exclude Outage Event, Progress Energy experienced severe weather conditions throughout its entire service territory on April 11 and 12, 2004 that caused extensive and wide-spread service interruptions to its customers. It was only after several months, however, that the Company was able to verify that these conditions were actually a weather phenomenon known as a Mesoscale Convective System or Complex. A Mesoscale Convective System, or MCS, is a system of thunderstorms that becomes organized on a scale larger than individual thunderstorms, and normally persists for several hours or more. When of sufficient size, shape and duration, the phenomenon is also known as a Mesoscale Convective Complex, or MCC. Due to the massive size and scale of these weather systems, they are not easily identified by normal ground-based weather radar, and generally require the perspective of infrared satellite photographs to identify their characteristic shape and other attributes.

4. The occurrence of a MCS in the deep Southeast region of the country is extremely rare and, in fact, it appears that no previous occurrence in Florida has been

recorded by the National Weather Service (NWS). Prior to review of the currently pending request to exclude an outage event filed by Florida Power & Light Company (FPL) in Docket No. 040449-EI, the Company was unaware that such a weather phenomenon existed. Although the severe weather system described as a MCS in FPL's request occurred on April 13, 2004, the day after Progress Energy's two-day outage event, the similarity between the characteristics of the two weather systems caused the Company to inquire into the nature of the weather system it had experienced.

5. Progress Energy's inquiry began with a search of the data bases on several websites of the NWS and the National Oceanographic and Atmospheric Administration (NOAA). Although the initial search disclosed no information that classified or characterized the April 11th and 12th weather system, the fact that there are frequently considerable delays before NWS classifies even the more common weather disturbances such as tornadoes, led the Company to continue monitoring these information sources. When these efforts proved to be of no avail, Progress Energy began an attempt to contact NWS representatives directly. After repeated calls to several NWS offices over an extended period went unreturned, the Company ultimately elected to retain the services of Weather Services International (WSI), a forensic meteorological consulting firm headquartered in Andover, Massachusetts, to investigate the weather system it experienced on April 11th and 12th. WSI undertook the assignment and submitted a written report of its investigation to Progress Energy

on July 20, 2004. A copy of the WSI report is included with the Company's proffered outage exclusion request as Attachment A.

6. Using infrared satellite photographs and meteorological data obtained from NWS/NOAA, the WSI report describes the development of a unique combination of atmospheric conditions that eventually spawned at least two separate but related MCSs: The first was a massive system several hundred miles in breadth that passed from west to east across Progress Energy's entire service territory on the evening and late night of April 11th; the second MCS was generally comparable in size and severity to the first and followed nearly the same path across the Progress Energy system on the morning and early afternoon of April 12th.

7. With conclusive, independently developed information finally in hand, the Company immediately began the preparation of its outage exclusion request and, because of the time that had elapsed since the outage event, this petition for a waiver of the 30-day filing requirement in Rule 25-6.0455(3).

Standard for Granting the Requested Waiver

8. Section 120.542(2), F.S., establishes the following two-prong standard for granting waivers or variances to the requirements of an agency rule:

Variations 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 a rule would create a substantial hardship or would violate principles of fairness. (Emphasis added.)

9. With respect to the purpose of the underlying statute, Rule 25-6.0455 in general and subsection (3) in particular implement a number of specific statutory provisions from Chapter 366 that collectively establish the Commission's broad authority over the reliability of service provided by electric utilities subject to its jurisdiction. In approving Staff's recommendation to adopt the current version of Rule 25-6.0455 at its August 20, 2002 Agenda Conference, the Commission 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 improvements. Better measurement and reporting has also led to improvements in reliability.”

In addressing the purpose of the new subsection (3) that allows the exclusion of outage events other than those specifically identified in subsection (2) if a utility demonstrates that it could not have reasonably prevented the outage event and that the event was not within its control, the Staff recommendation adopted by the Commission stated:

“The 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.”

10. There can be little doubt the Commission recognized that, in carrying out its statutory authority to evaluate a utility's performance in providing reliable service, it is important to distinguish between those outage events that are reasonably within the utility's control and those that are not. Granting the rule waiver requested

herein will achieve the purpose of this statutory authority by providing the Commission the opportunity to determine whether the outage event on April 11th and 12th was beyond the control and reasonable ability of Progress Energy to prevent. Conversely, no legitimate statutory purpose will be served by preventing this question from being considered by the Commission.

11. With respect to creating substantial hardship or violating principles of fairness, a rigid and inflexible application of the rule's 30-day filing period would do both. Such an application of the rule would effectively penalize Progress Energy because of the time required to develop the kind of information about a highly unusual weather phenomenon that was needed to submit a proper filing. This would impose a hardship on the Company by denying it the opportunity to have a significant outage event considered on its merits. Moreover, it would be contrary to basic fairness because the additional time required to file the exclusion request has not and will not prejudice the interests of any potential party, nor will it adversely affect in any way the ability of the Commission to consider the merits of the request fully and thoroughly.

12. Progress Energy is seeking a waiver of the rule's 30-day filing requirement on a temporary, one-time basis, that is applicable only to the outage exclusion request accompanying this petition. Any subsequent exclusion requests by the Company will be submitted in compliance with the rule's filing requirement, absent circumstances which may make such compliance infeasible or impossible. In

that event, a separate, stand-alone waiver petition particular to those circumstances will be submitted with the exclusion request.

WHEREFORE, for the reasons described above, Progress Energy respectfully requests that the Commission grant this petition for a temporary waiver of the 30-day filing requirement in Rule 25-6.0455(3), F.A.C., and authorize the Company to file the outage exclusion request proffered herewith.

Respectfully submitted,

s/

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