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JOHNNIE BYRD
Speaker



November 17, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. 041272-EI, 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

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of the Office of Public Counsel's and the Florida Industrial Power Users Group's (FIPUG) Joint Motion to Dismiss to Progress Energy Florida for filing in the above referenced docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Christensen".

Patricia A. Christensen
Associate Public Counsel

PC/pwd
Enclosures

DOCUMENT NUMBER-DATE
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FPSC-COMMISSION CLERK

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: November 17, 2004

Joint Motion to Dismiss of Citizens and FIPUG

The Citizens of the State of Florida (Citizens), by and through Harold McLean, Public Counsel, and the Florida Industrial Power Users Group (FIPUG), (collectively, Joint Movants), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file their Motion to Dismiss. In support of its Motion to Dismiss, Joint Movants state that:

Summary

The Commission must dismiss the Progress Petition seeking the establishment of a storm cost recovery clause because it is contrary to the settlement of Docket No. 000824-EI approved by this Commission and to which Progress, the Citizens, FIPUG and other parties are signatories; it violates past Commission practice; it unfairly seeks to place 100% of the expenses of the recent storms squarely on the backs of Progress's customers; it would emasculate the existing settlement; and it would, if permitted, permanently chill any possibility of future settlement of cases before the Commission.

Because Progress forewent the relief sought in this Petition, the Petition fails to state a claim upon which relief may be based.

Argument

1. The Commission should dismiss Progress Energy Florida, Inc.'s (Progress) Petition which seeks the establishment of a "Storm Cost Recovery Clause." Progress entered into a Stipulation and Settlement with the Office of Public Counsel (OPC), FIPUG and others¹ wherein Progress agreed not to petition for an increase in its base rates and charges, including interim rate increases, that would take effect prior to December 31, 2005. The Stipulation and Settlement is attached hereto and incorporated by reference. **Progress' current Petition for an increase is prohibited under the Stipulation and Settlement for the reasons discussed.**

2. On November 2, 2004, Progress filed its Petition requesting establishment of a "Storm Cost Recovery Clause" for recovery of expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan. Progress asserts that the Commission should establish a "Storm Cost Recovery Clause" to allow it to recover from its ratepayers over two years its reasonable storm costs in excess of the balance of the balance in its storm reserve. Progress contends that under its proposed clause the company should be allowed to recovery its storm-related Operating and Maintenance (O&M) costs, including in part its costs in excess of "typical" charges under normal operating conditions for capital expenditures.

Progress acknowledges that it should exclude recovery directly from customers for storm-related costs classified as capital expenditures under its proposed "Storm Cost Recovery Clause." Progress proposes, even under its clause scheme, that the storm-related capital expenditures allocated to the company's retail jurisdiction would be

¹ The Florida Retail Federation, Publix Super Markets, Inc., and Buddy Hansen and Sugarmill Woods Civic Association.

reported in surveillance reports and absorbed in current rates until the company's next base rate adjustment. However, this minor concession (which in this case is demanded by simple accounting principals) does not alleviate the defects in Progress's proposal.

3. Progress's request to establish a "Storm Cost Recovery Clause" is nothing more than an attempt to do an end run around its Stipulation and Settlement and to do it in a manner that is contrary to past Commission practice. As noted above, in Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Dockets Nos. 000824-EI and 020001-EI, the Commission approved the Stipulation and Settlement. Under this settlement, Progress agreed not to seek an increase in its base rates and charges, including interim rate increases that would take effect prior to December 31, 2005.

Order No. PSC-03-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI, established the storm damage reserve for Florida Power and Light. In that Order, the Commission acknowledged that hurricane-related expenses were included in base rates and, therefore, declined to create a 100% past through mechanism such as the clause Progress proposes now. *Id.* at p. 5. Order No. PSC-93-1522-FOF-EI, issued October 15, 1993, in Docket No. 930867-EI, approved the creation of a storm reserve fund for Progress. In that Order, the Commission noted that Progress was collecting for transmission and distribution property damage in its base rates. *Id.* at p. 3. At that time, Progress proposed that ". . . in the event that actual experience from storm damage exceeds the reserve balance at any given point in time, the excess costs should be deferred through the creation of a regulatory asset to be recovered from the customers over a five year period through a mechanism to be determined by this Commission."

Again, the Commission did not create a 100% past through mechanism via a clause and Progress did not ask for a clause.

Further, the Commission noted that it had a rule which governed the treatment of storm-related costs. Id. at p. 4. Rule 25-6.0143, Florida Administrative Code, addresses the treatment of actual expenses from storm damage that exceeds the storm reserve fund. Under Rule 25-6.0143, Florida Administrative Code, the balances in these storm accounts are to be evaluated at the time of a rate proceeding and adjusted as necessary, while permitting a utility to petition the Commission for a change in the provision level and accrual rate outside a rate proceeding.

Both these Orders and the Commission's rule clearly demonstrate that storm damage expenses are part of base rates. Even though Progress failed to mention in its Petition the Stipulation and Settlement, the Stipulation and Settlement obviously applies in this instance. Thus, Progress is attempting to have the Commission create a clause, because it is clear Progress cannot seek a base rate increase, which includes the storm reserve fund.

Under the Stipulation and Settlement, Progress agreed not to seek an increase in base rates that would be effective before January 1, 2006; however, Progress is attempting to do just that via a clause mechanism. Progress has asked the Commission to establish a clause because, it will no doubt argue that, the monies collected under a clause are apart from base rates and thus outside of the Stipulation and Settlement. But storm-related expenses were considered part of base rates at the time the Stipulation and Settlement was entered and approved by the Commission. Progress should not be allowed to circumvent its agreement through its attempt to move storm-related costs from

base rates to a clause. As noted in Order No. PSC-03-0876-FOF-EI, the Commission acknowledged the importance of upholding settlements as written.² Id. at p. 8.

Progress even agreed in the Stipulation and Settlement not to use the cost recovery clauses to recover for new capital items that were traditionally and historically treated as recoverable through base rates. Order No. PSC-02-06555-AS-EI at p. 16. Given this previous agreement in the Stipulation and Settlement, it is virtually disingenuous for Progress now to seek to use a clause mechanism for storm-related costs which have been traditionally and historically treated as recoverable through base rates. Thus, the Commission should uphold the Stipulation and Settlement and should not allow Progress to use a clause mechanism to obtain storm-related costs that have been traditionally and historically treated as recoverable through base rates.

4. If Progress is permitted to do an end run around the Stipulation and Settlement through the creation of a clause, this would emasculate the existing Stipulation and Settlement. Progress must be held to the wording of the Stipulation and Settlement as well as the spirit of the Stipulation and Settlement. To do otherwise would permanently chill any possibility of future settlement of cases before the Commission.

5. In addition, the manner by which Progress asks the Commission to allow it to collect for storm-related expenses that exceed the storm reserve fund is inappropriate. In addressing this issue in the past, the Commission noted that it would be inappropriate to transfer all risk of storm loss directly to the ratepayer to indemnify the utilities from

² It should be noted that under the Stipulation and Settlement, if Progress' retail base rate earnings fall below 10% ROE as reported on a FPSC adjusted or pro-forma basis on a Progress monthly earnings surveillance report during the term of the Stipulation and Settlement, Progress could petition the Commission to amend its base rates, but it would, of course, have to alleged and prove an earnings deficiency of that magnitude to proceed. Order No. PSC-02-06555-AS-EI at p. 16.

storm damage. Order No. PSC-03-0918-FOF-EI at p. 5. The Commission further noted that even with traditional insurance, the utilities were not free from risk and that this type of risk was a normal business risk in Florida. Id. The storm reserve fund was designed to fill the gap due to lack of insurance for T&D property damage, not to shift 100% of the risk of storm-related costs to the customers. The creation of a “Storm Cost Recovery Clause” would in fact shift 100% of the risk to the customers which the Commission has declined to do in the past.

6. The Commission stated in Order No. PSC-03-0918-FOF-EI and Order No. PSC-93-1522-FOF-EI that it would address storm-related cost in excess of the storm reserve funds based on a petition of the company. In those Orders, the Commission noted that in the past it had allowed recovery of prudent expenses and allowed amortization of storm damage expenses. The Commission further noted that extraordinary events such as hurricanes have not caused the utilities to earn less than a fair rate of return. Thus, the Commission permitted the companies to defer storm damage loss over the amount in the reserve until they acted on any petition filed by the company. Order No. PSC-03-0918-FOF-EI at pp. 5-6 and Order No. PSC-93-1522-FOF-EI at p. 4. Citizens and FIPUG believe that due to the magnitude of the storm-related costs, such costs need to be thoroughly analyzed. Citizens and FIPUG believe these costs are best addressed in conjunction with the company’s next rate proceeding in which customers can review the prudence of the expenses, the revenues and the company’s earnings.

7. In conclusion, Progress’ Petition to establish a “Storm Recovery Clause” should be dismissed. The Petition violates the Stipulation and Settlement Progress signed

with the Citizens, FIPUG and others. Moreover, the Petition seeks to create a clause mechanism which the Commission has specifically declined to create in the past.

Wherefore, the Citizens and FIPUG request that the Commission grant its Motion to Dismiss.

Dated this 12th day of November, 2004.

Respectfully submitted,

Harold McLean
Public Counsel



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Attorneys for FIPUG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail or *hand-delivery this 17th day of November, 2004:

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Patricia A. Christensen
Associate Public Counsel

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.

Docket No. 000824-EI

STIPULATION AND SETTLEMENT

Florida Power Corporation, the Office of Public Counsel, the Florida Industrial Power Users Group, the Florida Retail Federation, Publix Super Markets, Inc., and Buddy Hansen and Sugarmill Woods Civic Association (collectively, the Stipulating Parties), hereby enter into this Stipulation and Settlement for the purpose of reaching an informal resolution of all outstanding issues in Docket No. 000824-EI pending before the Florida Public Service Commission (the Commission) and, accordingly, stipulate and agree as follows:

1. Upon approval and final order of the Commission, this Stipulation and Settlement will become effective on May 1, 2002 (the "Implementation Date"), and continue through December 31, 2005, except as otherwise provided in Sections 6, 7 and 15 hereof.

2. Florida Power Corporation (FPC) will reduce its revenues from the Sale of Electricity by a permanent annual amount of \$125 million. This reduction will be reflected on FPC's customer bills by reducing all base rate charges for each rate schedule by 9.25%. All other cost of service and rate design matters will be determined in accordance with Section 16. FPC will begin applying the lower base rate charges required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

3. Effective on the Implementation Date, FPC will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings

levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels.

4. No Stipulating Party will request, support, or seek to impose a change in the application of any provision hereof. The Stipulating Parties other than FPC will neither seek nor support any additional reduction in FPC's base rates and charges, including interim rate decreases, that would take effect prior to December 31, 2005 unless such reduction is initiated by FPC. FPC will not petition for an increase in its base rates and charges, including interim rate increases, that would take effect prior to December 31, 2005, except as provided in Section 7.

5. During the term of this Stipulation and Settlement, revenues which are above the levels stated herein will be shared between FPC and its retail electric utility customers -- it being expressly understood and agreed that the mechanism for revenue sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment, and financial results of operations.

6. Commencing on the Implementation Date and for the remainder of 2002 and for calendar years 2003, 2004 and 2005, and for each calendar year thereafter until terminated by the Commission, FPC will be under a Revenue Sharing Incentive Plan as set forth below. For purposes of this Revenue Sharing Incentive Plan, the following retail base rate revenue threshold amounts are established:

I. Revenue Cap - All retail base rate revenues above the retail base rate revenue cap will be refunded to retail customers on an annual basis. The

retail base rate revenue cap for 2002 will be \$1,356 million. For 2002 only, the refund to customers will be limited to 67.1% (May 1 through December 31) of the retail base rate revenues exceeding the cap. The retail base rate revenue caps for calendar year 2003 and for each calendar year thereafter in which this Plan is in effect will be increased by \$37 million over the prior year's revenue cap. Section 8 explains how refunds will be paid to customers.

II. Sharing Threshold - Retail base rate revenues between the sharing threshold amount and the retail base rate revenue cap will be divided into two shares on a 1/3, 2/3 basis. FPC's shareholders shall receive the 1/3 share. The 2/3 share will be refunded to retail customers. The sharing threshold for 2002 will be \$1,296 million in retail base rate revenues. For 2002 only, the refund to the customers will be limited to 67.1% (May 1 through December 31) of the 2/3 customer share. The retail base rate revenue sharing threshold amounts for calendar year 2003 and for each calendar year thereafter in which this Plan is in effect will be increased by \$37 million over the prior year's revenue sharing threshold. Section 8 explains how refunds will be paid to customers.

7. If FPC's retail base rate earnings fall below a 10% ROE as reported on an FPSC adjusted or pro-forma basis on an FPC monthly earnings surveillance report during the term of this Stipulation and Settlement, FPC may petition the Commission to amend its base rates notwithstanding the provisions of Section 4. The other Stipulating Parties are not precluded from participating in such a

proceeding. This Stipulation and Settlement shall terminate upon the effective date of any Final Order issued in such proceeding that changes FPC's base rates.

8. All revenue sharing refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to retail customers of record during the last three months of each applicable refund period based on their proportionate share of base rate revenues for the refund period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding refund period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the third month after the end of the applicable refund period. Refunds to former customers will be completed as expeditiously as reasonably possible.

9. Beginning with the in-service date of Hines Unit 2 through December 31, 2005, FPC will be allowed to recover through the fuel cost recovery clause a return on average investment and straight-line depreciation expense (but no other non-fuel expense) for Hines Unit 2, to the extent such costs do not exceed the unit's cumulative fuel savings over the recovery period. All costs associated with Hines Unit 2, including those described in this section, are subject to Commission review for prudence and reasonableness as a condition for recovery through the fuel cost recovery clause. The investment for Hines Unit 2 upon which a return is recovered under this section will be excluded from rate base for surveillance reporting purposes during the recovery period.

10. Beginning with the Implementation Date through December 31, 2005, FPC will suspend accruals to its reserves for nuclear decommissioning and fossil

dismantlement. For each calendar year during this period, FPC will also record \$62.5 million as a credit to depreciation expense and a debit to the bottom line depreciation reserve and may, at its option, record up to an equal annual amount as an offsetting accelerated depreciation expense and a credit to the bottom line depreciation reserve. Any such reserve amount will be applied first to reduce any reserve excesses by account, as determined in FPC's depreciation studies filed after the term of this Stipulation and Settlement, and thereafter will result in reserve deficiencies. Any such reserve deficiencies will be allocated to individual reserve balances based on the ratio of the net book value of each plant account to total net book value of all plant. The amounts allocated to the reserves will be included in the remaining life depreciation rate and recovered over the remaining lives of the various assets. Additionally, depreciation rates as addressed in Order No. PSC-98-1723-FOF-EI, Docket No. 971570-EI, will not be changed for the term of this Stipulation and Settlement.

11. FPC will be authorized, at its discretion, to accelerate the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed Through, Unamortized Loss on Reacquired Debt, and Interest on Income Tax Deficiency over the term of this Stipulation and Settlement.

12. Beginning with meter readings made on and after the Implementation Date, FPC shall effect a mid-course correction of its fuel cost recovery clause to reduce the fuel clause factor based on projected over-recoveries, in the amount of \$50 million, for the remainder of calendar year 2002. The fuel cost recovery clause shall continue to operate as normal, including but not limited to, any additional mid-course adjustments that may become necessary and the calculation of true-ups to

actual fuel clause expenses. FPC will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates, except as provided in Section 9.

13. FPC will continue the implementation of its four-year Commitment to Excellence Reliability Plan, including its objective of a 20% improvement in FPC's System Average Interruption Duration Index (SAIDI), measured on a calendar-year basis, by no later than 2004. FPC will provide a \$3 million refund to customers in the event this SAIDI improvement is not achieved for calendar years 2004 and 2005. Any such refunds will be paid in equal amounts to the 10% of FPC's total retail customers served by FPC's worst performing distribution feeder lines based on each feeder line's SAIDI performance. SAIDI levels will be calculated consistent with the Commission's reliability reporting procedures, but SAIDI performance levels during 2004 and 2005 will be adjusted for extraordinary weather conditions that may occur during those years. Any disputes concerning the existence or extent of extraordinary weather conditions will be resolved by the Commission.

14. Effective on the Implementation Date, FPC will refund to customers \$35 million of the interim revenues collected subject to refund since March 13, 2001, through a credit to the fuel cost recovery clause in conjunction with the mid-course correction provided in Section 12. No other interim revenues collected by FPC during this period will continue to be held subject to refund.

15. The billing demand credits for Interruptible and Curtailable customers currently receiving service under FPC's IS-1, IST-1, CS-1 and CST-1 rate schedules shall remain in effect for the term of this Stipulation and Settlement, and thereafter until these rate schedules are reviewed in a general rate case, provided,

however, that these rate schedules shall continue to be closed to new customers, as defined in the stipulation approved by the Commission in Docket No. 950645-EI.

16. The cost of service and rate design matters identified in Exhibit A to this Stipulation and Settlement will be treated in the manner described therein. The Office of Public Counsel and the Florida Retail Federation have taken no position on the cost of service and rate design issues in this proceeding and, therefore, neither support nor oppose the cost of service and rate design provisions set forth in Exhibit A.

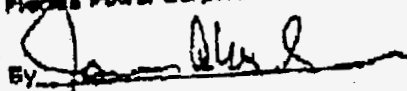
17. The provisions of Sections 1 through 15 of this Stipulation and Settlement are contingent on approval of these sections in their entirety by the Commission. The treatment of the cost of service and rate design matters identified in Exhibit A in accordance with Section 16 of this Stipulation and Settlement is contingent on approval of these matters in their entirety by the Commission. Approval of this Stipulation and Settlement in its entirety will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (2001). This Docket will be closed effective on the date the Commission Order approving this Stipulation and Settlement is final.

18. This Stipulation and Settlement dated as of March 27, 2002 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

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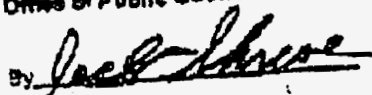
In Witness Whereof, the Stipulating Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

Florida Power Corporation

By 

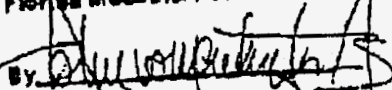
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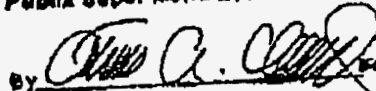
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail or *hand-delivery this 17th day of November, 2004:

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