

State of Florida



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Public Service Commission
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 TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: November 23, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Lee, Brennan, Matlock) *Sum*
 Office of the General Counsel (C. Keating) *WCK ROJ* *WOM/ALT* *JOJ*

RE: Docket No. 040792-EI – Request to exclude 4/11-12/04 outage event from annual distribution service reliability report by Progress Energy Florida, Inc.

AGENDA: 12/07/04 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

CRITICAL DATES: 90-day deadline for disposition of Rule Waiver Petition (10/25/04) waived by petitioner

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040792.RCM.DOC

Case Background

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 waiver from Rule 25-6.0455(3), which provides that a request must be filed within 30 days of the outage event for which an exclusion is requested. Notice of the company’s rule waiver petition was published in the Florida Administrative Weekly on August 13, 2004. The comment period expired on August 27, 2004, and no comments were received.

The Commission approved a request for exclusion by Florida Power & Light Company (“FPL”) by Order No. PSC-04-1102-PAA-EI, issued November 8, 2004, in Docket No. 040449-EI, In re: Request for exclusion under Rule 25-6.0455(3), F.A.C., for outages on April 13, 2004 resulting from weather system known as a "Mesoscale Convective System," by Florida Power & Light Company, (“FPL’s request”). Progress cited FPL’s request for consideration.

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Rule 25-6.0455 requires each investor-owned electric utility to file annually a Distribution Service Reliability Report containing data that the Commission uses to assess changes in distribution reliability. Under subsection (2) of the rule, a utility may exclude the specified outage events, such as a storm named by the National Hurricane Center, a tornado recorded by the National Weather Service, ice on lines, and an extreme weather event causing activation of the county emergency operation center. In addition, under subsection (3), 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.

SAIDI, or System Average Interruption Duration Index, is an index reported in the Annual Distribution Reliability Report that is used to represent overall reliability performance. Each utility's SAIDI value is impacted by the number and duration of the outages excluded. Progress' reliability performance in 2004 and 2005, as reflected by SAIDI, has financial implications for its customers. By Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Docket No. 000824-EI, the Commission approved the Stipulation and Settlement proffered by all parties as a complete resolution of all matters pending in that docket. Regarding Paragraph 13 of the stipulation, the Order states

This provision provides that FPC will refund \$3 million to customers in the event that the utility's SAIDI improvement is not achieved for calendar years 2004 and 2005. OPC has since clarified, and the other parties have agreed, that the proposed \$3 million refund to customers in the event that FPC does not achieve its distribution reliability objective during the years 2004 and 2005 applies separately to those years. FPC's objective is to achieve a 20% improvement (decrease) compared to its 2000 SAIDI in each of those years. Thus, if the objective were not achieved in 2004, FPC would refund \$3 million to customers in 2005; and if the objective were not achieved in 2005, FPC would refund \$3 million to customers in 2006.

(Page 5 of the Order)

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.041, and 366.05, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Progress Energy Florida, Inc.'s petition for waiver of the 30-day filing requirement in Rule 25-6.0455(3), Florida Administrative Code?

Recommendation: Yes. Progress Energy Florida, Inc. 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. (C. KEATING)

Staff Analysis:

Standard of Review

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 the rule.

Progress' Arguments

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 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 the Commission's broad authority over the reliability of service provided by electric utilities. Progress notes that the Commission, in approving 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 the 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 the Commission to evaluate a utility's performance in providing reliable service by allowing the Commission 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 the Commission's 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.

Analysis

Staff recommends that the Commission grant Progress' rule waiver petition. Staff believes 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, which requires the submission of annual distribution service reliability reports from each investor-owned utility in the state, was promulgated under the authority of Section 366.05(1), Florida Statutes. This section provides the Commission the power, among other things, to prescribe standards of quality and measurement. The information gathered

through these reports is used by the Commission in exercising its 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. This information is also used by the Commission 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. Staff believes that granting Progress' rule waiver petition will achieve this end and the purpose of the statutes noted above by allowing the Commission 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

Staff does 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.

Staff does 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 the 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.

Staff notes 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, staff believes 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.

Conclusion

Staff recommends that the Commission 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.

Issue 2: Should the Commission grant Progress Energy Florida Inc.'s request to exclude the outage events caused by a severe weather system on April 11 and 12, 2004, from the company's 2004 Annual Distribution Service Reliability Report?

Recommendation: Yes, based on Progress Energy Florida Inc.'s revised position that it seeks to exclude only the outages that were caused by the weather event, with the revised impact on the company's System Average Interruption Duration Index of 2.73 minutes, this severe weather event qualifies for exclusion under Rule 25-6.0455(3). Progress Energy Florida should file its 2004 Annual Distribution Service Reliability Report with and without the requested exclusion. (This issue is moot if the Commission denies the petition for waiver on Issue 1.) (Lee, Breman, Matlock)

Staff Analysis: Staff believes Progress' request for exclusion should be granted because Progress has reasonably demonstrated that:

1. A 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 reasonably demonstrated the occurrence of a severe weather event. A more detailed description of the weather event is provided in the analysis of Issue 1. 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 request. In response to staff's data request, 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 staff to believe that a 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. Progress revised its 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 further removed 738,229 CMI that were not likely to be storm-related. Based on the 52,004 Customer

Interruptions and 4,199,934 CMI after removing the outages not caused by the weather event, Progress' revised SAIDI impact of the weather event is 2.73 minutes.

Progress believes that it would be appropriate to exclude only those outages that were caused by the weather event. Staff believes excluding only the outages that were caused by the weather event is consistent with Rule 25-6.0455. In addition, Progress indicates 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. 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, staff believes Progress has reasonably demonstrated that the severe weather event of April 11 and 12 is the likely cause of the outages that the company is seeking to exclude.

In addition, 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. The company stated that the mobilization of crews and equipment, management, supervision, and support began in the evening of April 11 and the work was not completed until Tuesday, April 13.

Staff finds similarity 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 have historically 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. Staff believes Progress has demonstrated that the resulting outage events were not within its control and it could not reasonably have prevented them. Thus, the outage events qualify for exclusion under Rule 25-6.0455(3).

Consistent with Commission's decision on FPL's request, Progress should be required to file its 2004 Annual Distribution Service Reliability Report with and without the exclusion to enable assessment of trends in Progress' distribution reliability indices. In matters of significant financial implications such as rate cases, the Commission has considered factors such as data quality to assess whether a particular reported index indicates the best representation of actual performance. Staff believes that requiring Progress to file its report with and without the exclusion will enable assessment of the impact of exclusion under Rule 25-6.0455(3) to the trends in distribution reliability indices.

Docket No. 040792-EI
Date: November 23, 2004

Issue 3: Should this docket be closed?

Recommendation: Yes, this docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (C. KEATING)

Staff Analysis: If no timely protest to the proposed agency action is filed within 21 days, this docket should be closed upon the issuance of a Consummating Order.