

LANDERS & PARSONS, P.A.

ORIGINAL

ATTORNEYS AT LAW

DAVID S. DEE  
RONALD A. LABASKY  
JOSEPH W. LANDERS, JR.  
JOHN T. LAVIA, III  
FRED A. McCORMACK  
PHILIP S. PARSONS  
ROBERT SCHEFFEL WRIGHT

310 WEST COLLEGE AVENUE  
TALLAHASSEE, FL 32301

MAILING ADDRESS:  
POST OFFICE BOX 271  
TALLAHASSEE, FL 32302-0271

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TELEPHONE (850) 681-0311  
TELECOPY (850) 224-5595  
www.landersondparsons.com

BY HAND DELIVERY

Blanca Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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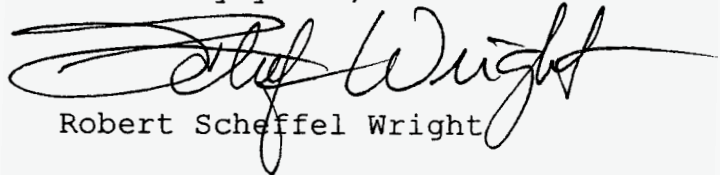
Re: Progress Energy Florida Storm Surcharges, Docket No.  
041272-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the Florida Retail Federation's Post-Hearing Brief and Statement of Issues and Positions in the above-styled docket. Also enclosed is a diskette containing the FRF's filing in WordPerfect format. I will appreciate your confirming receipt of this filing by stamping the attached copy thereof and returning same to my attention.


As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,

  
Robert Scheffel Wright

- CMP \_\_\_\_\_
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Enclosures

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EPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of Storm )  
Cost Recovery Clause for Recovery of )  
Extraordinary Expenditures Related to ) DOCKET NO. 041272-EI  
Hurricanes Charley, Frances, Jeanne, ) FILED: APRIL 26, 2005  
and Ivan, by Progress Energy Florida, Inc.)

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THE FLORIDA RETAIL FEDERATION'S POST-HEARING BRIEF  
AND STATEMENT OF ISSUES AND POSITIONS

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), and Order No. PSC-05-0339-PHO-EI, hereby files its Post-Hearing Brief and Statement of Issues and Positions.<sup>1</sup>

INTRODUCTION AND SUMMARY

The fundamental issue in this case is whether Progress Energy Florida, Inc. ("PEF" or "Progress") needs any rate relief in order to charge to its customers rates that are, considered in their totality, fair, just, and reasonable, as required by Chapter 366, Florida Statutes.<sup>2</sup> PEF's interests in this proceeding are represented by the company itself. The interests of PEF's captive

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<sup>1</sup> The following abbreviations are used in this brief. The Florida Public Service Commission is referred to as the "Commission" or the "PSC." The Florida Retail Federation is referred to as the "FRF." The Office of Public Counsel is referred to as "OPC" or the "Citizens." The Florida Industrial Power Users Group is referred to as "FIPUG." Citations to the hearing transcript are in the format [Witness Name, TR abc], where abc indicates the page number cited to. Citations to hearing exhibits are in the format [EXH jkl, xyz], where jkl indicates the exhibit number and xyz indicates the page number of the exhibit cited to, if applicable.

<sup>2</sup> All citations to the Florida Statutes in this brief are to the 2004 edition thereof.

customers are represented by the Office of Public Counsel, representing the Citizens of the State of Florida; by the FRF, representing a large number of PEF's commercial customers; by FIPUG, representing a number of PEF's industrial customers; by the Sugarmill Woods Civic Association, representing the interests of the residents of that community in PEF's service area; and by the AARP, representing the interests of its many members who receive retail service from PEF. Collectively, these representatives of PEF's customers are referred to herein as the "Consumer-Intervenors."

The Consumer-Intervenors believe and agree that PEF is entitled to charge rates that are, considered in their totality, fair, just, and reasonable. The Consumer-Intervenors believe, however, that the Storm Surcharges proposed by PEF are, when piled on top of PEF's existing base rates, unfair, unjust, and unreasonable. The combination of PEF's base rates and PEF's proposed Storm Surcharges would impose rates that include charging twice for the exact same labor services and other costs; such rates are not fair, just, and reasonable. The combination of PEF's base rates and PEF's proposed Storm Surcharges would require PEF's captive customers to bear all of the costs of storm restoration and still provide PEF with a rate of return on equity of approximately 13.5 percent. These results, and thus PEF's proposed surcharges, are unfair, unjust, and unreasonable, as well as directly contrary

to the principles that the Commission has articulated and consistently followed.

PEF, on the other hand, would violate and ignore the Stipulation and Settlement that PEF entered into in resolving its 2001-2002 general rate proceeding,<sup>3</sup> and would have the Commission abandon the principles that it articulated with respect to storm damage costs and associated ratemaking in Order 93-0918.<sup>4</sup> Order 93-0918 makes clear that:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."
2. "The Commission has never required ratepayers to indemnify utilities from storm damage."
3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years."
4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."

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<sup>3</sup> In Re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, PSC Docket No. 000824-EI, and In Re: Fuel and Purchased Power Cost Recovery Clause With Generating Performance Incentive Factor, PSC Docket No. 020001-EI, "Order Approving Settlement, Authorizing Midcourse Correction, and Requiring Rate Reductions," Order No. 02-0655-AS-EI (Fla. Pub. Serv. Comm'n, May 14, 2002) (hereinafter the "2002 Progress Stipulation" or the "Stipulation").

<sup>4</sup> In Re: Petition to Implement a Self-Insurance Mechanism for Storm Damage by Florida Power & Light Company, FPSC Docket No. 930405-EI, "Order Authorizing Self-Insurance and Re-Establishing Annual Funding of Storm Damage Reserve," Order No. PSC-93-0918-FOF-EI at 5 (Fla. Pub. Serv. Comm'n, June 17, 1993). This order is herein referred to as "Order 93-0918."

Contrary to these principles, PEF seeks to charge rates that require its captive customers to bear effectively all of the risks and all of costs incurred due to the 2004 storms while preserving for itself a rate of return on equity ("ROE") of approximately 13.5 percent, approximately 350 basis points above the ROE that PEF agreed to in the Stipulation and similarly far above any reasonable ROE under current market conditions. By any reasonable definition of the word, PEF is asking the Commission to force PEF's customers to indemnify it against storm losses. In staking out this position, PEF is further acting directly contrary to the Commission's principles articulated in 1993, because PEF's "proposal does not take into account the utility's earnings or achieved rate of return." Order 93-0918 at 5. Here, PEF is already earning an adequate return on equity, and would continue to do so if any Storm Surcharges were set, as advocated by the Consumer-Intervenors, such that its return on equity for 2004 (and 2005) were maintained at 10%. In other words, PEF's proposals, and its theory of the case, nominally grounding on purported consistency with earlier-approved accounting methods, are simply and effectively this: **The utility gets to keep all the money, and the customers have to bear all the costs.** In contrast, the Consumer-Intervenors' theory of the case is fair and principled and offers to appropriately share the risks and the costs of the 2004 storms on a reasonable and principled basis that is, in fact, generous toward PEF's shareholders.

The Commission should, indeed must, reject PEF's unconscionable ploy and instead follow its statutory mandate to ensure fair, just, and reasonable rates, and also follow its previously articulated principles, and thereby ensure that the rates charged by PEF are, considered in their totality, fair, just and reasonable.

#### DISCUSSION AND ARGUMENT

The Commission must ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. In this case, this requires that PEF's earnings and its achieved rate of return on equity be taken into account and, accordingly, that any Storm Surcharge approved by the Commission allow PEF to earn a 10% after-tax ROE for 2004 and 2005, as required by the Stipulation or, alternately, as a generous rate of return under current market conditions. This overarching principle -- that the Commission must ensure that PEF's rates are fair, just, and reasonable -- further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. Finally, any Storm Surcharges that are approved for the demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to classes; PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this in order to ensure that any approved surcharges are fair, just, and reasonable.

I. THE COMMISSION MUST ENSURE THAT PEF'S  
RATES, CONSIDERED IN THEIR TOTALITY,  
ARE FAIR, JUST, AND REASONABLE.

A. The Commission Must Ensure That PEF's Rates, Considered In Their Totality, Are Fair, Just, and Reasonable.

The Commission's overarching statutory mandate is to regulate utilities in the public interest and to ensure that utilities' rates are fair, just, and reasonable. Fla. Stat. §§ 366.01, 366.05(1), 366.06(1)&(2), and 366.07. Clearly, the totality of a utility's rates are always at issue. A utility must not be allowed to set up "special" rates, like PEF's proposed surcharges here, that would insulate it from risk and that would, when piled on top of the utility's other rates, result in rates that are unfair, unjust, and unreasonable, yet that is exactly the ploy attempted here by PEF. By requesting full recovery through its proposed guaranteed cost recovery clause mechanism, PEF is seeking to evade any responsibility for costs that it otherwise would have to bear under the Stipulation and Settlement, and that it would otherwise have to bear by application of principles articulated by the Commission more than 10 years ago, by attempting to place those expenses outside of base rates.

B. PEF's Customers Have Compensated PEF's Shareholders Generously For Taking Risks And Would Continue To Compensate Them Generously If PEF's Surcharges Were Set So As To Provide A 10% Rate Of Return On Equity.

PEF's customers compensate PEF's shareholders generously for assuming risks attendant to the ownership and operation of the

utility. Rothschild, TR 597-98. PEF's shareholders surely do not pay PEF's customers to take any risk. Rothschild, TR 613. Mr. Rothschild demonstrated that compensation for risk can be measured by the difference between allowed or achieved rate of return on equity ("ROE") as compared to a fully guaranteed, risk-free return. TR 597-98, 612-614. For the risk-free return, Mr. Rothschild uses the fully guaranteed return on long-term U.S. Treasury bonds, which for the time periods relevant here is approximately 4.85%. TR 598.

In 2003, PEF earned an achieved FPSC-adjusted ROE of 13.43%. EXH 54, 2 of 32. In 2004, PEF earned an achieved ROE of 13.48%. EXH 54, 19 of 32. In dollars, this means that PEF's customers paid PEF's shareholders about \$257 million, after-tax, as risk compensation in 2003. ((1343 - 485 basis points) @ \$30 million per 100 basis points, Portuondo, TR 420, equals \$257.4 million.) Appropriately grossing this amount up for income taxes, see Rothschild at TR 614, means that PEF's customers paid in approximately \$412 million (using a typical revenue expansion factor of 1.6; Mr. Rothschild hypothesized an expansion factor of 1.5) in compensation to PEF's shareholders above a risk-free return in 2003. And, it is important to note, PEF's customers have no quarrel with that result for 2003.

It further means that, if PEF has its way with its customers in this proceeding, PEF's customers will pay PEF's shareholders about the same amount, approximately \$259 million, after-tax, as



risk compensation for 2004. ((1348 - 485 basis points) x \$30 million per 100 basis points, Portuondo, TR 420, equals \$258.9 million.) Grossed up for income taxes, this means that PEF's customers will have again paid more than \$410 million above a risk-free return to PEF's shareholders. The FRF believes that it is reasonable to expect at least a similar result for 2005, unless the Commission adjusts PEF's rates appropriately. Such returns are excessive, unfair, and unreasonable because they would unfairly and inequitably insulate PEF from cost risks associated with the 2004 storms, and would unfairly transfer such risks to PEF's customers.

Even at a 10% ROE, as required by the 2002 Progress Stipulation and as advocated here by the FRF and by the other Consumer-Intervenors, PEF's customers will still pay PEF's shareholders for 2004 more than \$154 million in after-tax compensation above the risk-free rate of return. On a pre-tax basis, this would correspond to about \$250 million in risk compensation paid in by PEF's customers. While it is presently impossible to know what PEF's earnings will be for 2005, the FRF<sup>5</sup> submits that this same principled approach should be applied to 2005 earnings as well: the Stipulation still applies, and 10% is a generous after-tax ROE for 2005 as well. Rothschild, TR 603. Placing on PEF's shareholders that portion of the storm costs

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<sup>5</sup> Other Consumer-Intervenors advocate different treatments for 2005.

that reduces PEF's "return on equity down to 10.0% is fully consistent with the nature of risk and investment, as well as applicable principles of regulation." Rothschild, TR 596. Indeed, a 10% after-tax ROE is more than double the risk-free rate of return in today's financial market climate. Rothschild, TR 597-98, 601-602.

This is generous compensation for taking risks.<sup>6</sup> It still provides PEF with the ROE that it agreed to as a "floor" in the 2002 Stipulation. If the Stipulation is deemed not to apply (which would be incorrect in the view of the FRF), it still provides PEF with a generous after-tax rate of return relative to current market conditions, in which after-tax returns for utilities and general stocks are generally in the range of 9.3% to a bit more than 10%. Rothschild, TR 596-98, 600-602. Note, too, that PEF, depending on the amortization schedule that it chose to adopt, could potentially have filed for a base rate increase before the expiration of the Stipulation if its ROE would have fallen below 10%. However, if it had done so, its ROE would have been subject to being reset based on current market conditions, and as demonstrated above, a 10% ROE "is more than reasonable in today's financial climate." Rothschild, TR 603.

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<sup>6</sup> Indeed, it is particularly generous in light of the fact that approximately 53 percent of PEF's costs are presently recovered through the various cost recovery clauses and charges that the Commission has authorized. See Brown, TR 786-87.

Progress's position is simply, like the old college football cheer, even when the score is 70 to 3, "We want more!" The Commission cannot countenance such blatant overreaching. The Commission must act to ensure that the totality of PEF's rates are fair, just, and reasonable. Allowing a 10% return on equity for 2004 and 2005 would accomplish that result, it would be fair to PEF within the terms of the 2002 Stipulation, it would be fair to PEF relative to current market conditions, it would provide for a principled sharing of the risks and costs associated with the 2004 hurricanes, and it would be fair to PEF's customers who are footing the bill. Allowing PEF to charge rates that provide PEF's shareholders with ROEs in the range of 13 to 14 percent, while "simultaneously requir[ing] PEF's ratepayers to bear all of the risk that they are paying [PEF's] investors to accept," Rothschild, TR 597, 615-16, would be unfair, unjust, and unreasonable. Rothschild, TR 615-16; Brown, TR 788.

C. PEF's Predecessor, Florida Power Corporation, Has Recognized That Excess Earnings To Increase Storm Damage Accruals Is Appropriate. The Principles Involved In Using Excess Earnings To Reduce A Storm Damage Reserve Deficit Are The Same.

In 1994, Florida Power Corporation ("FPC"), PEF's predecessor, proposed to use excess earnings to, among other things, increase its storm reserve accrual. In Re: Investigation Into Currently Authorized return on Equity and Earnings of Florida Power Corporation, PSC Docket No. 940621-EI, and In Re: Petition for Authorization to Implement a Self-Insurance Program

for Storm Damage by Florida Power Corporation, PSC Docket No. 930867-EI, "Notice of Proposed Agency Action Order Establishing Earnings Cap for 1994, Accelerating Amortization and Increasing Storm Damage Reserve," Order No. 94-0852 at 1-2 (Fla. Pub. Serv. Comm'n, July 13, 1994) ("Order 94-0852"). In the proceedings that led to the issuance of Order 94-0852, FPC proposed to use, and the Commission approved the use of, overearnings, determined relative to an earnings cap based on a 12.5% ROE, first to accelerate the "Sebring going concern value," and then to increase FPC's storm damage accrual. As Order 94-0852 stated, "[i]f the acceleration of the Sebring amortization is insufficient to reduce the 1994 achieved ROE to 12.5%, additional storm damage expense will be recognized in order to achieve the 12.5% ROE." Order 94-0852 at 2 (emphasis supplied).

Using excess earnings is the flip side of the same coin. If PEF can use excess earnings to build the reserve by recognizing additional storm damage expense, it can use excess earnings to reduce a reserve deficit by recognizing additional storm damage expense. The key issue, then, is the reference point against which excess earnings are to be measured. As demonstrated above, a 10% after-tax ROE is fair to PEF within the terms of the 2002 Stipulation, and it is generous relative to current market conditions. Even PEF's predecessor has acknowledged that excess earnings may appropriately be applied to storm costs, and accordingly, sound and fair ratemaking allows for such use here,

and a 10% after-tax ROE as the basis for determining excess earnings is demonstrably fair.

D. Rates That Include "Double-Dipping," i.e., Double Recovery For The Exact Same Costs, Are Not Fair, Just, And Reasonable, And Accordingly, Such Double-Dipping Should Be Disallowed.

As stated clearly above and in Chapter 366, Florida Statutes, the Commission must ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. This overarching regulatory mandate requires not only that PEF's earnings and its achieved ROE be taken into account in determining any Storm Surcharges approved by the Commission, it further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. See Majoros, TR 680-81, Brown, TR 755, 761. PEF's proposals, however, would result in several such "double-dips" that the Commission should disallow, including approximately: \$5.46 million in non-management employee labor payroll expense (Majoros, TR 687); \$6.4 million in payroll associated with exempt management employees (Majoros, TR 687); \$1.4 million of claimed storm-related costs related to tree-trimming (TR 547, 688, 731); \$8.0 million in costs for removal that have already been paid by PEF's customers (Majoros, TR 737-38); and \$3.04 million of claimed vehicle fleet expenses (Majoros, TR 687-88). These "double-dips" total approximately \$24.3 million.

E. Other Regulatory Bodies With Jurisdiction Over PEF and Its Affiliates Do Not Allow Recovery As Requested by PEF.

In North Carolina and South Carolina, and at the federal level, Progress and its affiliates are required to amortize storm deficiencies, and are not allowed to recover storm costs through surcharges. With regard to its FERC-regulated wholesale rates, Progress is amortizing the wholesale portion of storm restoration costs through base rates over five years. Portuondo, TR 409. The FERC did not allow Progress to increase its base rates to recover storm costs. Portuondo, TR 409; Brown, TR 782. PEF's affiliate that operates in North Carolina and South Carolina, Progress Energy Carolina, has experienced hurricanes and ice storms and has incurred restoration costs as a result thereof, but neither the North Carolina nor South Carolina regulatory bodies have allowed Progress Energy Carolina a surcharge to recover storm costs. Portuondo, TR 421-22. The Florida Public Service Commission should likewise be extremely skeptical of PEF's proposed surcharges and should only allow surcharges, if at all, to the extent necessary to provide PEF with the opportunity to earn a 10% after-tax ROE for 2004 and 2005.

**II. PEF'S PROPOSALS ARE DIRECTLY CONTRARY TO  
THE REGULATORY AND RATEMAKING PRINCIPLES  
PREVIOUSLY ARTICULATED BY THE COMMISSION  
WITH REGARD TO STORM COSTS.**

The Commission has previously articulated several principles with regard to risk allocation and ratemaking relative to storm costs. PEF's positions here are directly contrary to those principles, and PEF's positions should accordingly be rejected.

In the above-cited Order 93-0918, the Commission articulated several principles applicable here, including:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."
2. "The Commission has never required ratepayers to indemnify utilities from storm damage."
3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years."
4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."<sup>7</sup>

In stark contrast to these principles, PEF's proposed surcharges would transfer effectively all risks and all costs associated with the 2004 storms to PEF's captive customers, thereby preserving for PEF excessive rates of return on equity, approximately 13.5% for 2004. This is directly contrary to the principles articulated by the Commission in Order 93-0918. Moreover, there is no basis for the PSC to be concerned that reducing PEF's ROE to 10% would adversely impact PEF's credit. Rothschild, TR 603-604.

PEF's proposals would, if approved, require PEF's customers to indemnify PEF's shareholders from storm damage costs. Brown, TR 745-46, 751-53. Such indemnification of PEF's shareholders by PEF's captive customers is also directly contrary to the

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<sup>7</sup> Order No. PSC-93-0918-FOF-EI at 5.

principles articulated by the Commission in Order 93-0918. Consistent with and bolstering this principle, Mr. Rothschild testified that "[b]ecause ratepayers pay rates that compensate investors for all risks, including storm damage, it would be entirely inappropriate to shift the full risk of such costs to ratepayers." Rothschild, TR 596. Moreover, this is fair, just, and reasonable because ratepayers are entitled to be shielded from risks by virtue of paying significant risk premiums to utility shareholders, and because investors understand that they are paid to take risks. Rothschild, TR 598. It follows directly that PEF's shareholders should bear some risk of storm costs, and the issue before the Commission is thus, "How much?" As answered by the FRF above, PEF should share down to the point at which its achieved ROEs for 2004 and 2005 are 10% after-tax.

In further stark contrast to these principles, PEF's proposals would not "take into account the utility's earnings or achieved rate of return." In fact, PEF's strategy is to ignore those earnings, as excessive as they are relative to both the Stipulation and relative to today's financial climate, directly contrary to the PSC's principles. PEF further attempts to ignore that it is "already earning an adequate return on equity," such that at least a significant part of "its storm-related expenses could be amortized in whole or in part over five years." Even amortizing the bulk of PEF's storm costs over two years would preserve for PEF an after-tax ROE of 10% for both 2004 and 2005.



This is consistent with the PSC's principles; PEF's proposals are thus inconsistent with the PSC's principles and should be rejected, or at least significantly modified as described above.

Finally, and obviously, PEF's proposal attempts to implement a surcharge for storm costs. While storm-related expenses would typically be, and have historically been, recovered through changes in base rates, such base rate changes are limited due to the Stipulation and Settlement. In substance, the FRF would agree that PEF has the right to seek base rate relief to get its base rates to a level that would provide PEF with the opportunity to earn a rate of return on equity of 10.0%. Although PEF has not asked for this relief, as it should have, the FRF is agreeable to treating PEF's petition for its proposed Storm Surcharges as requesting such relief, and to the Commission handling the issues in this docket. Any approved Storm Surcharges should cease to exist as soon as the allowed storm damage balance, adjusted so that the totality of PEF's rates provide for a 10% after-tax ROE for 2004 and 2005 and also adjusted to correct for inappropriate double-dipping, is recovered.

**III. ANY STORM SURCHARGES APPROVED BY THE COMMISSION  
SHOULD RECOVER DEMAND-RELATED COSTS CONSISTENTLY  
RELATIVE TO THE ALLOCATION OF SUCH COSTS.**

Any Storm Surcharges that the Commission approves for PEF's demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to

classes. PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this proposal in order to ensure that any approved surcharges are fair, just, and reasonable.

For the purposes of setting surcharges for PEF's demand-metered GSD, CS, and IS rates, costs should be recovered through a demand charge consistent with the allocation of the costs to be recovered. The storm restoration costs consist almost entirely, if not entirely, (a) transmission costs, which are allocated to rate classes on the basis of the classes' contributions to PEF's coincident peak demands, and (b) distribution costs, which are allocated to rate classes on the basis of the classes' non-coincident peak demands. Portuondo, TR 409-10. Progress's proposed surcharges, however, would recover these costs on an energy basis. Portuondo, TR 410. PEF's witness Portuondo acknowledged that PEF recovers a significant amount of demand-related transmission and distribution costs "through a flat dollars per kW demand charge in base rates," and he further agreed that "allocating on the basis of demand and recovering on the basis of energy is inconsistent vis-a-vis customers with different load factors within demand metered classes." Portuondo, TR 410; Brown, TR 771-772. The Commission should not allow this acknowledged inconsistency, and should instead require PEF to set any Commission-approved surcharges for PEF's demand-metered GSD,

CS, and IS rates, so as to recover costs through a demand charge consistent with the allocation of the costs to be recovered.

#### CONCLUSION

Ultimately, this is simply a case about PEF's rates. The Commission's statutory mandate is to ensure that PEF's rates, considered in their totality, are fair, just, and reasonable. In this situation, this requires that PEF's earnings and its achieved rate of return on equity be taken into account and, accordingly, that any Storm Surcharge approved by the Commission allow PEF to earn a 10% after-tax ROE for 2004 and 2005, whether as required by the Stipulation or, alternately, as a generous rate of return under current market conditions. This overarching principle further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. Finally, any Storm Surcharges that are approved for the demand-metered classes should be calculated and structured consistently with the manner in which costs are allocated to classes; PEF's proposal would inconsistently recover demand-related costs via energy charges, and the Commission must correct this proposal in order to ensure that any approved surcharges are fair, just, and reasonable.

## STATEMENT OF ISSUES AND POSITIONS

**ISSUE 1:** Did PEF act reasonably and prudently prior to the storms to minimize storm-related costs? If not, to what extent should the proposed recovery amount be adjusted?

**FRF:** \*By agreement of the parties, this issue has been withdrawn.\*

**ISSUE 2:** Has PEF quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the storm reserve? If not, what adjustments should be made?

**FRF:** \*No. Through its claimed storm-related costs, PEF is attempting to require its customers to pay twice for basis levels of non-management employee labor payroll expense. To correct this inappropriate claim, \$5.46 million of the amount PEF charged to the storm reserve should be disallowed.\*

**ISSUE 3:** Has PEF properly treated payroll expense associated with managerial employees when determining the costs that should be charged to the storm reserve? If not, what adjustments should be made?

**FRF:** \*No. No part of payroll associated with exempt management employees should be charged to the storm reserve. To correct this inappropriate claim, \$6.4 million of the amount PEF charged to the storm reserve should be disallowed.\*

**ISSUE 4:** At what point in time should PEF stop charging costs related to the 2004 storm season to the storm damage reserve?

**FRF:** \*PEF should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever occurred first.\*

**ISSUE 5:** Has PEF charged to the storm reserve appropriate amounts relating to employee training for storm restoration work? If not, what adjustments should be made?

**FRF:** \*No. Employee training is a basic function, and accordingly, the costs for such training are not appropriately charged to the storm damage reserve and not appropriately recovered through any storm surcharge.\*

**ISSUE 6:** Has PEF properly quantified the costs of tree trimming that should be charged to the storm reserve? If not, what adjustments should be made?

**FRF:** \*No. The Commission should disallow \$1.4 million of PEF's claimed storm-related costs related to tree-trimming.\*

**ISSUE 7:** Has PEF properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve? If not, what adjustments should be made?

**FRF:** \*No. Through its claimed storm-related costs, PEF is attempting to require its customers to pay twice for basic levels of vehicle fleet expenses. The Commission should limit recovery of vehicle-related costs to only incremental fuel costs associated with extra shifts, and should thus disallow \$3.04 million of the amount that PEF seeks to recover through its proposed surcharges.\*

**ISSUE 8:** Has PEF properly determined the costs of call center activities that should be charged to the storm damage reserve? If not, what adjustments should be made?

**FRF:** \*No. PEF's claimed storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.\*

**ISSUE 9:** Has PEF appropriately charged to the storm reserve any amounts related to advertising expense or public relations expense for the storms? If not, what adjustments should be made?

**FRF:** \*No. PEF has a basic obligation to keep its customers informed, particularly during emergencies. The Commission should disallow \$2.4 million of advertising and public relations expense that PEF charged to the storm reserve.\*

**ISSUE 10:** Has uncollectible expense been appropriately charged to the storm damage reserve? If not, what adjustments should be made?

**FRF:** \*No. Uncollectible expense is not properly charged to the storm damage reserve because it is foreign to the restoration effort. No uncollectible expense should be allowed for recovery through this proceeding, and the Commission should accordingly disallow \$2.25 million of the amount that PEF seeks to recover for uncollectible expense.\*

**ISSUE 11:** Should PEF be required to offset its storm damage recovery claim by revenues it has received from other utilities for providing assistance in their storm restoration activities? If so, what amount should be offset?

**FRF:** \*Yes. PEF should be required to offset its storm-related costs with those revenues that it received for recovery of costs associated with the level of normal operating and maintenance expenses that would have otherwise been incurred by PEF since the effective date of the Stipulation and Settlement.\*

**ISSUE 12:** Has PEF appropriately removed from the costs it seeks in its petition all costs that should be booked as capital costs associated with its retirement (including cost of removal) and replacement of plant items affected by the 2004 storms? If not, what adjustments should be made?

**FRF:** \*No. PEF's claimed storm-related costs should be limited to those that are incremental to the level of normal expenses that would have otherwise been incurred. Additionally, PEF's allowed storm costs should be offset by approximately \$8 million of removal costs for which PEF's customers have already paid through the depreciation charges embedded in base rates.\*

**ISSUE 13:** Has PEF appropriately quantified the costs of materials and supplies used during storm restoration that should be charged to the storm reserve? If not, what adjustments should be made?

**FRF:** \*This issue has been stipulated.\*

**ISSUE 14:** Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of storm-related costs to be charged against the storm damage reserve?

**FRF:** \*Based on the foregoing issues, PEF's claimed storm-related costs to be charged against the storm damage reserve should be reduced by at least \$33 million.\*

**ISSUE 15:** Does the stipulation of the parties that the Commission approved in Order No. PSC-02-0655-AS-EI affect the amount or timing of storm-related costs that PEF can collect from customers? If so, what is the impact? (Legal issue)

**FRF:** \*Yes. The 2002 Progress Stipulation requires that PEF defray storm-related costs from earnings to the point that its return on equity has fallen to 10%. If the costs were deferred and amortized, approximately \$102 million after-tax for 2004 and a likely-similar amount for 2005, would have been borne by PEF during 2004 and 2005, while base rates under the Stipulation were still in effect. Thus, any recovery by PEF via surcharges should be reduced by these amounts.\*

**ISSUE 16:** In the event that the Commission determines the stipulation approved in Order No. PSC-02-0655-AS-EI does not affect the amount of costs that PEF can recover from ratepayers, should the responsibility for those costs be apportioned between PEF and retail ratepayers? If so, how should the costs be apportioned? (Contingent issue)

**FRF:** \*Yes. Even if the Commission determines that the Stipulation does not apply, the Commission should limit PEF's recovery to an amount that is sufficient, considered with PEF's existing base rates, to provide PEF with the opportunity to earn a 10% ROE. This is a generous ROE under current market conditions and will result in PEF's customers compensating PEF's shareholders generously for the risks that they take.\*

**ISSUE 17:** What is the appropriate amount of storm-related costs to be recovered from the customers? (Fallout issue)

**FRF:** \*The amount appropriately recoverable from PEF's customers is defined by the amount claimed by PEF, \$251.9 million,

less \$33 million in double-counted or overstated costs, less \$102 million after-tax for 2004, less the amount of PEF's earnings constituting an after-tax ROE greater than 10% for 2005. For example, if PEF's 2005 earnings exceeded those necessary to provide an after-tax 10% ROE by \$60 million, the amount recoverable through surcharges would be approximately \$57 million.\*

**ISSUE 18:** If recovery is allowed, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

**FRF:** \*The storm damage account should be credited each month with the actual costs recovered from ratepayers.\*

**ISSUE 19:** Should PEF be authorized to accrue and collect interest on the amount of storm-related costs permitted to be recovered from customers? If so, how should it be calculated?

**FRF:** \*Yes, if any recovery via a surcharge is allowed, PEF should charge interest, at the commercial paper rate, on the outstanding storm damage account minus the income tax savings realized by PEF.\*

**ISSUE 20:** What mechanism should be used to collect the amount of the storm-related costs authorized for recovery?

**FRF:** \*Such costs should be collected as a separately stated charge, pursuant to a base rate rider, on customer's bills for the period of recovery. The FRF does not agree that, as a general matter or principle, a surcharge mechanism is appropriate in this or any other case. The FRF is agreeable to this mode of cost recovery, if any recovery is allowed, because in substance it will achieve the results that PEF would be entitled to under the Stipulation.\*

**ISSUE 21:** If the Commission approves recovery of any storm-related costs, how should they be allocated to the rate classes?

**FRF:** \*This issue has been stipulated.\*

**ISSUE 22:** What is the proper rate design to be used for PEF to recover storm-related costs?



**FRF:** \*For the purposes of GSD, CS, and IS rates, such costs should be recovered through a demand charge consistent with the testimony and exhibits of FIPUG Witness Sheree L. Brown. Recovery through an energy charge is inconsistent with the allocation of these costs, which are allocated on the basis of class coincident peak (transmission) and non-coincident peak (distribution) demands.\*

**ISSUE 23:** What is the appropriate recovery period?

**FRF:** \*This issue has been stipulated.\*

**ISSUE 24:** If the Commission approves a mechanism for the recovery of storm-related costs from the ratepayers, on what date should it become effective?

**FRF:** \*This issue has been stipulated.\*

**ISSUE 25:** Should PEF be required to file tariffs reflecting the establishment of any Commission-approved mechanism for the recovery of storm-related costs from the ratepayers?

**FRF:** \*This issue has been stipulated.\*

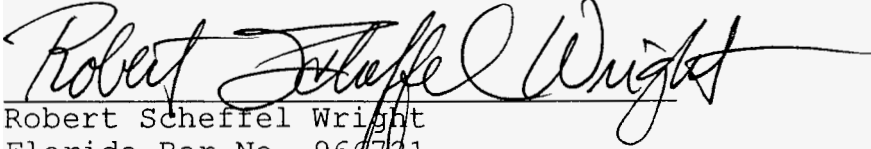
**ISSUE 26:** What are the effects, if any, of the study that PEF (then Florida Power) submitted to the Commission in Docket No. 930867-EI on February 28, 1994 and Order No. PSC-94-0852-FOF-EI, issued in Docket Nos. 940621-EI and 930867-EI on July 13, 1994 on the manner in which PEF may account for storm-related costs in this proceeding?

**FRF:** \*The subject study and order are not dispositive of the issues in this docket. The 1994 order determined only that PEF's annual storm fund accrual should be increased; it did not prejudice cost recovery from PEF's captive customers under the self-insurance regime.\*

**ISSUE 27:** Should the docket be closed?

**FRF:** \*No. The docket should remain open to ensure that PEF collects the appropriate amount of costs, as determined by the Commission, including an appropriate credit against claimed 2004 storm costs for 2005 earnings above a 10% ROE.\*

Respectfully submitted this 26<sup>th</sup> day of April, 2005.



Robert Scheffel Wright  
Florida Bar No. 964721  
John T. LaVia, III  
Florida Bar No. 853666  
LANDERS & PARSONS, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(850) 681-0311 Telephone  
(850) 224-5595 Facsimile

Attorneys for the Florida  
Retail Federation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail, hand delivery (\*) or facsimile and U.S. Mail (\*\*) on this 26<sup>th</sup> day of April, 2005, on the following:

Jennifer Brubaker, Esq.\*  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

John W. McWhirter, Esq. \*\*  
McWhirter Reeves Davidson  
Kaufman & Arnold, P.A.  
400 North Tampa Street  
Tampa, FL 33602

Harold A. McLean, Esq.\*  
Joseph A. McGlothlin, Esq.  
Patricia Christensen, Esq.  
Office of the Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399

Timothy J. Perry, Esq.\*  
McWhirter Reeves Davidson  
Kaufman & Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, FL 32301

Gary L. Sasso, Esq.\*\*  
James Michael Walls, Esq.  
John T. Burnett, Esq.  
Carlton Fields, P.A.  
4221 West Boy Scout Boulevard  
Tampa, FL 33607

Michael B. Twomey, Esq.  
P. O. Box 5256  
Tallahassee, FL 32314

R. Alexander Glenn \*\*  
Deputy General Counsel  
Florida Progress Energy  
Service Company, LLC  
100 Central Avenue, Suite 1D  
St. Petersburg, FL 33701

  
Attorney