

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 041272-EI

In the Matter of:

PETITION FOR APPROVAL OF STORM COST
RECOVERY CLAUSE FOR RECOVERY OF
EXTRAORDINARY EXPENDITURES RELATED
TO HURRICANES CHARLEY, FRANCES,
JEANNE, AND IVAN, BY PROGRESS
ENERGY FLORIDA, INC.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN LISA POLAK EDGAR
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER ISILIO ARRIAGA
 COMMISSIONER MATTHEW M. CARTER, II
 COMMISSIONER KATRINA J. TEW

DATE: Tuesday, August 29, 2006

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 Chief, Hearing Reporter Services Section
 FPSC Division of Commission Clerk and
 Administrative Services
 (850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08120 SEP-5 8

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 ALEX GLENN, ESQUIRE, representing Progress
3 Energy.

4 HAROLD McLEAN, ESQUIRE, representing the
5 Citizens of the State of Florida.

6 JENNIFER BRUBAKER, ESQUIRE, and JOHN
7 SLEMKEWICZ, representing the Commission Staff.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

CHAIRMAN EDGAR: Item 6. Okay.

MR. SLEMKEWICZ: I'm John Slemkewicz with the Commission staff. Item 6 is Docket Number 041272-EI, Progress Energy Florida, Inc.'s petition to extend the current storm cost-recovery surcharge for an additional 12 months to replenish its storm damage reserves. The parties to this docket filed a stipulation and settlement agreement and subsequent clarifying letters that resolved the issues in this docket. Staff is recommending that the Commission approve the clarified stipulation. Staff is prepared to answer any questions that the Commissioners might have.

CHAIRMAN EDGAR: Thank you. Mr. Glenn.

MR. GLENN: Alex Glenn on behalf of Progress Energy Florida. Just a few words.

One, I wanted to express our appreciation to the other parties to this settlement for all of their hard work, diligence, and professionalism during the negotiations, which took a lot of long hours and a lot of give and take. And in particular our Public Counsel, Harold McLean, for his hard work and integrity in the negotiations. We would respectfully request that you approve the settlement, and I'm here to answer any questions that you may have.

CHAIRMAN EDGAR: Thank you, Mr. Glenn.

Mr. McLean.

1 MR. McLEAN: Our review is similar. It was amicable
2 negotiations. It is always a pleasure to work with Mr. Glenn
3 and his team from Progress, and I appreciate the compliments,
4 Alex, and I offer the same to the company. And, of course,
5 staff was involved in this one, as well, and we had cooperation
6 from them, and I think well-informed points of view.
7 Everything went quite smoothly. And we think the settlement
8 serves the interests of the citizens of Florida. Thank you.

9 CHAIRMAN EDGAR: Thank you, Mr. McLean. Thank you
10 for your comments. And I would like to take the opportunity to
11 commend our staff on this item, who I know spent a lot of time
12 working through the various provisions. And thank all of the
13 signatories for continuing to work with our staff after the
14 initial document was submitted to us.

15 MR. McLEAN: Madam Chair, if I may.

16 CHAIRMAN EDGAR: Mr. McLean.

17 MR. McLEAN: I didn't put in a good word for my
18 fellow intervenors without whom I would be adrift. Thanks to
19 them, as well.

20 CHAIRMAN EDGAR: Commissioner Tew.

21 COMMISSIONER TEW: Not to break up all the harmony, I
22 just have very small clarification on Page 39 of the rec, and
23 it's in the August 10th letter from Progress Energy. In the
24 second paragraph it references Paragraph 2 of the agreement and
25 settlement, and I believe that is supposed to be a

1 clarification of Paragraph 3. And if this is an attachment to
2 the actual settlement, I just wanted to be clear that that
3 was -- it's Page 39, the August 10th letter.

4 MR. GLENN: That's correct.

5 COMMISSIONER TEW: It should be Paragraph 3?

6 MR. GLENN: Yes.

7 COMMISSIONER TEW: I just wanted to get that on the
8 record. That's all.

9 CHAIRMAN EDGAR: And noting also for the record that
10 is it Mr. Glenn who is the signator on the letter, and his
11 appreciation to Commissioner Tew for correction of that
12 typographical error.

13 Commissioners, are there further -- Commissioner
14 Arriaga.

15 COMMISSIONER ARRIAGA: I don't have any particular
16 objection to the settlement. It has been clarified. Just a
17 brief statement and then a brief question also.

18 Attachment C on Page 33 mentions in several
19 opportunities, and I'm just going to read a phrase because it
20 has been repeated over and over. "Because so doing is
21 consistent with and supports the Commission's longstanding
22 policy of looking favorably upon and encouraging fair and
23 reasonable settlements between parties."

24 That could be. I'm beginning to question myself, me
25 personally, on encouraging fair and reasonable settlements

1 because there have been already two occasions recently where
2 there has been disagreement in settlements that were signed
3 within the last two years. And I'm beginning to question the
4 fairness and reasonableness of those settlements, and I'm
5 beginning to see ourselves as a Commission involved in trying
6 to mediate these agreements. So I don't know. Just thinking
7 out loud, is this a longstanding policy that we should
8 continue. Just to leave it out in the air.

9 The question. Attachment C, Ms. Brubaker, is a very
10 reasoned and thorough argument as to why we should have allowed
11 what was proposed originally from Progress Energy. But then
12 Attachment D is a very simple letter just saying we would not
13 proceed to do what we reasoned thoroughly before. Which one
14 has more legal weight?

15 MS. BRUBAKER: Well, I would have to say that
16 ultimately what is before us is what is summarized in
17 Attachment D. What you see in Attachment C went along with
18 what was originally proposed with regard to the interim
19 process. That was the reason that Attachment C was originally
20 submitted was to support that original interim process whereby
21 basically there is an automatic implementation of the interim.

22 Since what was ultimately put before staff and thus
23 the Commission was a different process, the interim process,
24 where the company does come in and request a certain amount and
25 it does go through the Commission for its approval, we didn't

1 include any in-depth analysis or anything to these legal
2 arguments. Had this been before us, however, certainly I would
3 have addressed this in a very different manner. I don't know
4 if that answers your question.

5 COMMISSIONER ARRIAGA: Let me go one step further.
6 Assume that for XYZ reason we had to go to court, which one
7 would carry more legal weight? Is it possible that somebody
8 would pull Attachment C and say this is the legal reasoning for
9 allowing what is argued in Attachment C. Attachment D is a
10 simple letter, it doesn't carry the same weight.

11 MS. BRUBAKER: No, not at all. Attachment D is what
12 carries the weight, because that's what ultimately has been
13 proposed. Attachment C at this point -- the main purpose of
14 even including Attachment C is there are other clarifications
15 that are contained not having to do with the legal argument to
16 which you are referring. Frankly, that legal argument is
17 essentially moot at this point because that is not what is
18 before us.

19 MR. COOKE: Commissioner, the recommendation that is
20 drafted specifically incorporates Attachment D as part of the
21 recommendation.

22 COMMISSIONER ARRIAGA: Thank you so much. As I said
23 before, Madam Chair, I have no specific objection to the
24 settlement. I'm willing to vote for it. I just wanted to make
25 the comments that I made for the record. Thank you.

1 CHAIRMAN EDGAR: Thank you, Commissioner Arriaga, for
2 your comments and for your clarification. Just a comment kind
3 of as a follow-up. I know I'm comfortable continuing to
4 support and encourage fair and reasonable settlements, and note
5 that the optimum words there are fair and reasonable. And I
6 also would go a little further and submit that when, indeed,
7 the need may arise for this Commission to interpret provisions
8 of a fair and reasonable settlement, that that interpretation
9 will also be fair and reasonable.

10 Commissioner Deason.

11 COMMISSIONER DEASON: I would just like to take a
12 moment to echo what you just said, Madam Chair, and make
13 emphasize that the longstanding policy of this Commission to --
14 in answer to the Commissioner's question is an emphatic yes, we
15 should maintain our longstanding policy of encouraging
16 agreements and stipulations and settlements. I know that there
17 are times when there are questions of interpretation. I think
18 that's just part of the process.

19 I think that given the number of settlements and
20 stipulations we have encouraged and approved, that the few that
21 have been brought to our attention for clarification, they are
22 few in comparison. So I think it should be interpreted that we
23 have been very successful. And the subject matter of these
24 stipulations are addressing matters that are complex and are
25 controversial, certainly very important to the citizens of this

1 state.

2 And to adequately address those types of issues,
3 there are going to be times when -- there will be times when
4 there will questions of clarification and where reasonable
5 people can disagree. I think this is a step in the direction
6 of adding clarification and preventing further disagreement,
7 and I applaud the parties for bringing this to us.

8 But, Commissioner, I understand the frustration from
9 time to time, and sometimes we kind of get caught in the
10 middle. But it is difficult to craft, and even though those
11 that craft these settlements are certainly very skilled people,
12 know the subject matter, and put in hours and hours of time and
13 try to cover all possible scenarios, it is just humanly
14 impossible to craft a stipulation that is going to be clear in
15 every conceivable scenario that may play out in reality. But,
16 yes, to answer the question and in support of what the Chairman
17 said, I think that obviously the settlement process is
18 something that needs to be encouraged to the extent that we
19 can.

20 CHAIRMAN EDGAR: Thank you, Commissioner Deason.
21 Commissioner Carter.

22 COMMISSIONER CARTER: Thank you, Madam Chairman. For
23 the record, I just would like to say to our staff, thank you
24 for a fantastic job. And if I may, Madam Chairman, I would
25 like to same thank you to Progress Energy Florida, Office of

1 the Public Counsel, Florida Industrial Power Users Group, the
2 Florida Retail Federation, the AARP, Sugarmill Woods Civic
3 Association, and Buddy L. Hansen all parties to this agreement.
4 Thank you all for reaching that agreement, and it is something
5 that I can wholeheartedly support.

6 So, Madam Chairman, at the appropriate time I would
7 move staff's recommendation on this issue.

8 CHAIRMAN EDGAR: Thank you, Commissioner Carter.
9 Commission Tew, did you have a brief comment?

10 COMMISSIONER TEW: I, too, support the stipulation
11 and settlement that is before us, and I'm in agreement with the
12 comments that have been raised earlier with respect to the
13 difficulty in crafting agreements that resolve everything
14 before us in these cases. And I think that the very nature of
15 all the parties that Commissioner Carter just mentioned add to
16 that difficulty. But whenever they come to agreement and they
17 have represented all sectors of the issue. I think that that
18 is something to look favorably upon and try to highlight any
19 areas where we think there are clarifications initially, as
20 staff has done here, but otherwise I think we are going to have
21 some things that are just going to come back to us at times
22 whenever parties can't agree on what the particular paragraph
23 said after the fact. But I do support the stipulation and
24 settlement before us.

25 CHAIRMAN EDGAR: Thank you.

1 Commissioner Arriaga.

2 COMMISSIONER ARRIAGA: I certainly appreciate all the
3 comments that have been made, and I don't have any major
4 disagreement. As I said, the settlement is good. The parties
5 approved it. Fine with me. I'm going to vote for it. But I
6 was just bringing to the attention of the Commission the fact
7 that the same parties that all sit here today praising the
8 agreement may be sitting there tomorrow with some kind of
9 disagreement, and it will be our job to go ahead and clarify
10 and rule on the disagreement.

11 So when that happens, and I'm beginning to see it
12 happen more frequently, is when I get a little bit concerned
13 about us embracing so thoroughly these agreements. We should
14 approve them, we should encourage them, but to embrace them the
15 way we are embracing it when there is the potential for
16 disagreement, and we have seen strong potential for
17 disagreement the last two or three months, I'm just wondering.
18 It was just a thought that I threw out in the air, and I
19 certainly respect and appreciate all of your comments and the
20 way you think. Fortunately, we're in the United States and we
21 can free to think and express ourselves.

22 CHAIRMAN EDGAR: And in the sunshine.

23 COMMISSIONER ARRIAGA: I'm just a little bit
24 concerned about the fact that you have negotiated agreements,
25 and then you are coming back to us and siting right in front of

1 us as you are sitting today and saying this is not what we
2 meant. So that is what we are here for. That's all. Thank
3 you.

4 CHAIRMAN EDGAR: Thank you, Commissioner. Okay. It
5 is about that time.

6 Commissioner Carter.

7 COMMISSIONER CARTER: Move staff's recommendation.

8 CHAIRMAN EDGAR: Thank you.

9 Is there a second?

10 COMMISSIONER DEASON: Second.

11 CHAIRMAN EDGAR: We have had discussion. All in
12 favor of the motion say aye.

13 (Unanimous affirmative vote.)

14 CHAIRMAN EDGAR: Opposed?

15 Show the motion carried.

16 MR. McLEAN: Thank you, Commissioners.

17 CHAIRMAN EDGAR: Thank you, Mr. McLean. Thank you,
18 Mr. Glenn. And thank you again to, as I said earlier, all the
19 signatories on the agreement.

20 * * * * *

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)

:

CERTIFICATE OF REPORTER

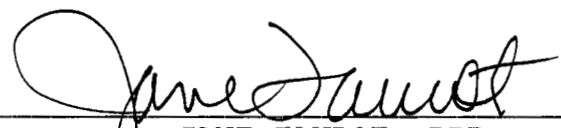
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 5th day of September, 2006.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732