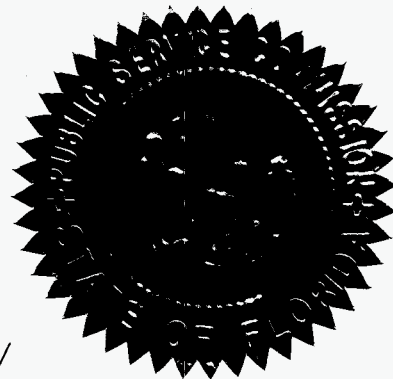


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 090145-EI

In the Matter of:

PETITION FOR EXPEDITED APPROVAL
OF THE DEFERRAL OF PENSION
EXPENSES, AUTHORIZATION TO CHARGE
STORM HARDENING EXPENSES TO THE
STORM DAMAGE RESERVE, AND VARIANCE
FROM OR WAIVER OF RULE 25-6.0143(1) (C),
(D), AND (F), F.A.C, BY PROGRESS
ENERGY FLORIDA, INC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, June 16, 2009

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

REPORTED BY: LINDA BOLES, RPR, CRR
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P R O C E E D I N G S

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3 **CHAIRMAN CARTER:** Okay. Staff, let's proceed
4 with Item Number 6. You are recognized.

5 **MR. SLEMKEWICZ:** I'm John Slemkewicz with the
6 Commission staff. Item 6 is Docket Number 090145-EI,
7 Progress Energy Florida, Inc.'s, petition to defer
8 pension expenses and request a waiver of Rule 25-6.0143
9 to allow the charging of storm hardening expenses to the
10 Storm Damage Reserve.

11 Staff is recommending that Progress be allowed
12 to defer its 2009 pension expense and to create a
13 regulatory asset for the deferred amount. Staff is also
14 recommending that the rule waiver request should be
15 denied and that no storm hardening expenses should be
16 charged to the Storm Damage Reserve. Representatives of
17 the parties are present to address the Commission.

18 **CHAIRMAN CARTER:** Thank you. Let's hear from
19 the parties.

20 **MR. WALLS:** Good morning, Commissioners. I'm
21 Mike Walls on behalf of Progress Energy Florida.

22 To begin with, PEF accepts the staff
23 recommendation with respect to the petition for approval
24 of the deferral of \$31.5 million of 2009 pension
25 expense. Staff is correct that PEF's request is not

1 prohibited by the stipulation. As staff recognizes, the
2 stipulation expressly allows PEF to seek an increase in
3 PEF's achieved -- in rates if PEF's achieved or
4 projected ROE falls below 10 percent. PEF's achieved
5 ROE is below 10 percent and its projected ROE is below
6 10 percent even with the interim and limited rate relief
7 previously granted by this Commission, and I have a
8 handout that will demonstrate that as well.

9 **CHAIRMAN CARTER:** Okay. You may proceed.

10 **MR. WALLS:** As this handout shows, our prior
11 projected ROE was 6.89 percent, and even with the
12 increase for Bartow repower and interim rates, we are
13 still below the 10 percent even if the pension deferral
14 request is approved by the Commission today.

15 In fact, with the current projected sales
16 through the first quarter of the year, we are still
17 seeing a decline due to the economy, and we are
18 projected to be at 8.13 percent as of that period of
19 time. So as a result, it's clear that PEF could have
20 requested a limited rate increase under the stipulation
21 for pension expense.

22 I'd like to point out that like the Bartow
23 project, pension expense is one of the primary drivers
24 for the deep freeze in PEF's 2009 ROE. Like Bartow,
25 too, pension expense is a unique 2009 expense because it

1 is driven by the effects of an unprecedented economic
2 downturn which we have all experienced, which have
3 impacted the investments supporting the company's
4 pension obligations justifying a limited rate increase
5 and therefore this is not, as the intervenors, argue
6 retroactive ratemaking.

7 Rather than increase customer rates though
8 further in 2009 through additional limited rate relief,
9 PEF looked for a way to improve earnings without
10 impacting customer bills. As a result, PEF seeks to
11 defer its 2009 pension expense as a regulatory asset
12 even beyond its 2010 rate case. The intervenors'
13 contention that this deferral is inappropriate under
14 accounting principles is flat wrong. As staff correctly
15 recognizes in the recommendation, statement of Financial
16 Accounting Standards 71 permits the deferral of these
17 costs through the creation of a regulatory asset.

18 PEF believes the deferral of the 2009 pension
19 expense should have been higher, though, at the 52.9 as
20 corrected, reflecting the difference between the actual
21 2008 retail pension income and the projected 2009 retail
22 pension expense. Staff disagrees because it argues that
23 the 2008 books have been closed, but PEF would point out
24 that staff's recommendation still recognized that had
25 PEF -- at Page 12, that if not for the 21.4 million

1 pension benefit in 2008, the amount of the interim rate
2 increase that PEF asked for would have been greater. So
3 customers received that benefit from the 2008 pension
4 benefit.

5 Customers will also benefit from the deferral
6 of the 2009 pension expense beyond the 2010 rate case
7 until 2015. There is no carrying costs and subsequent
8 pension credits may be produced along the way. As the
9 economy turns around and markets improve, it may reduce
10 or eliminate this pension expense. If PEF's 2009
11 pension expenses are deferred, customer bills do not
12 increase, but as demonstrated by the handout, PEF's
13 financial stability is better protected.

14 This is a win/win result for the company and
15 the customer and, therefore, we request that the
16 Commission approve the staff recommendation.

17 **CHAIRMAN CARTER:** Thank you.

18 Mr. Wright.

19 **MR. WRIGHT:** Thank you, Mr. Chairman. Schef
20 Wright appearing on behalf of the Florida Retail
21 Federation. By agreement of counsel, Mr. Rehwinkel is
22 going to present the consumers' comments.

23 **CHAIRMAN CARTER:** Good morning, Mr. Rehwinkel.

24 **MR. REHWINKEL:** Good morning, Mr. Chairman and
25 Commissioners. My name is Charles Rehwinkel with the

1 Office of Public Counsel, and I'm here today on behalf
2 the Citizens of Florida, and I think the intervenors
3 generally.

4 Commissioners, today Public Counsel together
5 with other intervenors is here on behalf of the nearly
6 20 million Floridians and over one million Progress
7 Energy customers on this third and fourth matters of
8 interim related to the Progress 2009 rate case. We are
9 here on behalf of the Citizens of Florida to voice our
10 strong and constant objections to what we perceive to be
11 the systematic dismantlement of the stipulation that the
12 people of Florida entered into with the company before
13 this Commission in 2005.

14 Now, today the posture of this case is
15 slightly different from the previous items in that the
16 staff has recommended and the customers favor on one
17 item, and we appreciate that recommendation and
18 wholeheartedly support it on the storm damage issue. We
19 do not agree with the statements today by Progress that
20 the stipulation allows the storm damage expenses to be
21 recovered. We also object to all consideration of
22 projected 2009 earnings in any of your decision-making
23 today as portrayed in the handout that has just been
24 provided as well as any projections that were provided
25 in similar handouts in prior agendas.

1 Even despite the staff's favorable
2 recommendation, the reason we are here today to speak is
3 because the bedrock foundation for the company request
4 for all of the interim relief in these three separate
5 but intricately linked dockets, and for that matter the
6 staff's favorable recommendation on three of the four
7 items, is the notion that there is an unstated but
8 implied right for Progress Energy to achieve a 10
9 percent return on equity for 2009. This notion is
10 flawed on several levels and we are compelled to resist
11 it with every legal tool available to us.

12 For this reason, I must take a few minutes to
13 explain why we are once again here opposing Progress'
14 efforts to adjust its 2009 earnings. We have made our
15 arguments about why the stipulation has been violated by
16 the granting of interim relief. That error is
17 perpetuated in the staff's recommendation on Pages 11
18 and 12 in support of the company request on pension
19 costs, and as such it must be addressed again to some
20 degree.

21 Commissioners, I would like to address you to
22 the first full paragraph on Page 12. This is a good
23 example of the fundamental error that we think the
24 Commission has committed in first interpreting the
25 stipulation and then in applying that stipulation as it

1 regards 2009 earnings. I'll just read for you right now
2 the first two paragraphs -- the first two sentences of
3 that paragraph.

4 "However, the stipulation expressly allows PEF
5 to seek an increase in base rates if its achieved or
6 projected ROE falls below 10 percent. The company has
7 done precisely that in its respective requests for
8 interim relief in Docket Number 090079-EI, and for a
9 rate increase associated with the Bartow repowering
10 project in Docket Number 090144-EI."

11 Commissioners, almost as an aside, the
12 stipulation says nothing about projected ROE nor does
13 the interim statute allow it. It's purely historical
14 achieved ROE. Pursuant to well-established Commission
15 rule, the statute, there's nothing projected allowed.
16 And to the extent that is part of the underpinnings of
17 the recommendation, we are here to object to that.

18 Secondly, the unambiguous language of the
19 stipulation is that the company gets to file one of
20 either a general rate proceeding or a limited proceeding
21 if the surveillance report reflects an ROE of less than
22 10 percent. We said this at a prior agenda and I will
23 repeat it here that earnings-based interim relief that
24 was filed as part of the company's rate case petition on
25 Pages 3 through 5 of that petition does not emanate from

1 this stipulation.

2 Let me repeat that, because it seems to be
3 lost here. The interim relief of 6.5 million that was
4 granted, or 13 million that was requested was not
5 requested pursuant to the authority of Paragraph 7 of
6 the stipulation. The authority claimed by the company
7 for that increase was pursuant to the interim statute
8 which is only triggered by the filing of a general rate
9 increase. That is the case filed in Docket Number
10 090079. It was not filed under the stipulation, but
11 instead filed in anticipation of the expiration of the
12 stipulation.

13 It matters not one iota what the earnings
14 level of the company is throughout the year 2009 as far
15 as whether the company can seek relief starting
16 January 1, 2010. Any entitlement to earnings-based
17 interim relief flows from the right of the company to
18 file a rate case and, of course, where the company has
19 not bargained away such a right, which it clearly did in
20 agreeing to a pure revenue sharing mechanism.

21 I revisit this issue, Commissioners, because
22 there appears to be an assertion by the staff that the
23 two interim relief orders issued so far are grounded in
24 rights that flow from the 10 percent trigger language of
25 Paragraph 7, and a constructed notion of an absolute

1 entitlement to have earnings be no less than 10 percent
2 for 2009 for this company.

3 To the extent that they have been adopted
4 by -- these assumptions have been adopted by the
5 Commission in two orders that have been issued so far
6 relating to interim relief, and to the extent that they
7 disregard the clear expressed language of the
8 stipulation, these assumptions are legally in error, or
9 arbitrary and capricious, and constitute a fundamental
10 error and a departure from the essential requirements of
11 the law.

12 Patent in these errors, Commissioners, is the
13 fact that you have eviscerated the fundamental thrust of
14 the stipulation through a series of erroneous steps. It
15 is without question that the heart of the agreement was
16 to settle a rate case by allowing the company to achieve
17 limited expedited rate relief for the Hines units in
18 return for a going forward revenue sharing mechanism
19 that was intended to be the sole method of measuring
20 earnings.

21 That language in Paragraph 14 of the
22 stipulation is express and unambiguous. Nevertheless,
23 by an out-of-context and incomplete comparison to a
24 prior stipulation, an implied right to earnings-based
25 interim relief was cobbled together to create an

1 implied constructed term that was then used to defeat
2 the express language of Paragraph 14 that says there is
3 no authorized ROE and there is no method to address
4 earnings except for the revenue sharing mechanism.

5 For reasons not directly relevant to this
6 exercise today, that logic was then extended to allow
7 the company to utilize the interim statute in a way that
8 was not allowed by the stipulation or the interim
9 statute by using information completely outside the
10 interim statute's historical-only formula, and that, of
11 course, would be the projected ROE information which
12 seems to be underlying all the decision-making in this
13 docket.

14 Nevertheless, this error merely compounded the
15 error that obliterated the only benefit of the bargain
16 that the customers struck. This error, Commissioners,
17 will be further compounded today if you grant any relief
18 to the company that allows it to bypass the revenue
19 sharing only mechanism embodied in the earnings
20 agreement that the company made by allowing it to defer
21 debits from 2009 in order to achieve an earnings-based
22 result.

23 Once you have done this you have completely
24 dissolved the stipulation's benefit to the customers and
25 made the settlement of cases when otherwise called for

1 by the facts and circumstances a difficult issue for the
2 customers. After what has happened here, the tortured
3 around-the-elbow efforts to defeat the clear language of
4 the stipulation, our office will be hard pressed to be
5 able to settle cases if settlements can be cast aside so
6 easily.

7 The pension case is simple in our view.
8 Progress is not happy with the earnings level that they
9 have achieved in 2009 or that they project to achieve in
10 2009. They have a revenue sharing mechanism that
11 totally supplants any concern about what their achieved
12 ROE is for 2009, but they see the pension expense
13 accrual as a drag on those earnings. They would like
14 this drag to be removed and to preserve the opportunity
15 to recover those debits in future years and have them
16 measured in the earnings surveillance program.

17 This is wrong on several accounts. First,
18 this relief is not authorized by the stipulation.
19 Second, as we have demonstrated, there is no right to
20 have earnings-based entitlement during the term of the
21 stipulation. That will end on December 31st, 2009.
22 Third, allowing this recovery this way would constitute
23 retroactive ratemaking under your precedent. And,
24 fourth, it would allow double recovery of these costs.

25 I would like to point you now specifically,

1 Commissioners, to Paragraph 7 of the stipulation. Under
2 this paragraph, and we went through this a lot at the
3 prior agenda, but it bears -- it is very important that
4 we look at this one more time. Paragraph 7 of the
5 stipulation says this, "If PEF's retail rate base
6 earnings fall below a 10 percent return on equity as
7 reported on a Commission adjusted or pro forma basis on
8 a PEF monthly earnings surveillance report during the
9 term of the agreement, PEF may petition the Commission
10 --" and this is a crucial phrase -- "To amend its base
11 rates notwithstanding the provisions of Section 4 either
12 as a general rate proceeding or as a limited proceeding
13 under Section 366.076, Florida Statutes."

14 Progress chose -- Progress made its election
15 under this paragraph and that was consummated at the
16 last agenda. They could do one of two things. One,
17 they could file their general rate proceeding; they did
18 not choose that. Or they could file a limited
19 proceeding; they chose and that's what Bartow was.

20 Okay. And they chose to amend their base
21 rates through the Bartow filing. That was their one
22 bite at the apple. To date you all have given them two
23 bites at the apple, and they are here now seeking a
24 third bite at the same apple. And we think it's twice
25 removed from what is allowed by the stipulation. The

1 express language of the stipulation says they get to do
2 this once. Bartow was their once.

3 On Pages 3 through 5 of their petition -- I
4 apologize, on Page 6 of their petition, the company says
5 the deferral of \$52.5 million retail in pension expense
6 will not involve a change in PEF's retail rates or
7 prices. Commissioners, I assert that that disqualifies
8 them to seek relief under Paragraph 7 of this
9 stipulation.

10 This is not a petition to amend rates. Put
11 aside the fact that this is the third bite at the apple
12 that they get one bite at. They do not seek relief
13 based on this paragraph. This is, instead, based on
14 this mythical constructed notion that they are entitled,
15 guaranteed to earn as close to 10 percent as they can.
16 That is not what the stipulation says. So,
17 Commissioners, I assert to you right off the bat this is
18 a fatally flawed request for that reason alone.

19 We have made our point that this is not --
20 there is no guarantee for 10 percent earnings. I have
21 kind of beat that horse. I will leave it. We will also
22 reiterate to you today here, Commissioners, that under
23 the United Water case which we cite in our objection
24 that achieving -- that what they are asking for is
25 directly on point with that case where the courts have

1 interpreted retroactive ratemaking to occur when an
2 attempt is made to recover either past losses
3 (underearnings or overearnings) in prospective rates.

4 What the company is doing is almost directly
5 on point with the United Water case that we have cited
6 in our pleading. What that would do is allow the
7 company to go back and take debits that were, in their
8 opinion, unrecovered because of the level of earnings
9 and recover them in a future period. We also believe
10 that it constitutes double recovery, because under the
11 stipulation since there was a pure revenue sharing
12 mechanism, all of their expenses, i.e., debits are
13 considered recovered under that mechanism.

14 In other words, earnings are irrelevant. So
15 they are deemed to have recovered these costs already.
16 So allowing them to be measured in earnings or used in
17 rates in any future period would allow them the
18 opportunity to double recover those costs.

19 In sum, Commissioners, we urge you to recede
20 from this course of disregarding this essence and
21 meaning of the stipulation and refrain from granting any
22 further relief of this type to the company. We believe
23 that serious and perhaps fatal damage has been done to
24 the availability of the stipulation as a dispute
25 resolution tool before the Commission. Continuing to

1 grant the requested interim request will only magnify
2 that error. Thank you.

3 **CHAIRMAN CARTER:** Thank you.

4 Ms. Kaufman, good morning.

5 **MS. KAUFMAN:** Good morning, Chairman,
6 Commissioners. I'm Vicki Gordon Kaufman. I'm with the
7 law firm of Keefe, Anchors, Gordon, and Moyle. I am
8 here on behalf of the Florida Industrial Power Users
9 Group who was a participant in the settlement
10 discussions and a signatory to the stipulation that you
11 have heard so much about already in this proceeding.

12 As to the rule waiver issue, the first issue
13 before you, we agree, and support, and appreciate the
14 staff's recommendation. I think it's clear that the
15 requirements of Chapter 124 rule waiver have not been
16 met.

17 In regard to the second issue of the pension
18 deferral that Mr. Rehwinkel discussed, we agree with and
19 we adopt his comments. We think that the relief that's
20 being sought here is outside of the stipulation, and we
21 also agree with the comments that he made in regard to
22 the prior decisions which we believe were contrary to
23 the plain language of the stipulation. So we support
24 the Public Counsel's request for relief and we urge you
25 to reject the request for the deferral of the pension

1 funds in this matter. Thank you.

2 **CHAIRMAN CARTER:** Thank you. Thank you very
3 kindly.

4 Commissioners, we have heard from the parties.
5 Now we're open for discussion. Any discussion?

6 Commissioner Skop, you're recognized, sir.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

8 I think that we have heard from the parties
9 and I appreciate the discussion. I think, Mr.
10 Rehwinkel, to your point about the past Commission
11 decision, I think that it's ripe for a motion for
12 reconsideration, but it seems the crux of the argument
13 was directed towards our prior decision using that as a
14 basis for -- if I understood your argument correctly,
15 for why this should be denied because our previous
16 decision was in error.

17 Again, I guess if that issue comes before the
18 Commission at a later time, we'll address it. But I
19 think what I would like to do is probably hear from our
20 staff to better understand their reasoning as well as
21 any staff comments in relation to some of the concerns
22 the parties have expressed.

23 **CHAIRMAN CARTER:** Staff, you're recognized.

24 **MR. MAUREY:** Andrew Maurey, Commission staff.
25 With respect to the pension issue, we are in

1 agreement with the intervenors that the 10 percent
2 threshold is no guarantee. The company is not
3 guaranteed to earn that, and it was not the basis for
4 our recommendation. What was the basis was that the
5 company is earning under 10 percent. In our most
6 information it's earning 9.16 percent in its April
7 surveillance report. It has come in before this
8 Commission for various relief, the interim in Bartow
9 that was already discussed, but in this case storm
10 hardening and pension. That even with this additional
11 relief it is still under 10 percent.

12 The company, our reading of the stipulation,
13 could come before you again with some other requested
14 relief. And, again, it's just that, a request for your
15 consideration. And when we reviewed FAS 158 and FAS 187
16 with respect to pension expense, and FAS 71 with respect
17 to the deferral, the creation of regulatory assets or
18 liabilities for the deferral of certain costs, we agree
19 with the company's interpretation of those statements,
20 and we have also included -- with the creation of this
21 regulatory asset and the deferral that staff is
22 recommending in the amount of 31.5, we have included a
23 few conditions that hopefully will safeguard that if the
24 economy does turn around this amount may never hit
25 rates. It could be fully amortized before it ever got

1 to that point.

2 There is no carrying charge on this amount.
3 The company could have asked for a carrying charge, but
4 there is none. We are not recommending there be one.
5 Also, the company has agreed to stay out, not to ask for
6 this prior to any rate -- prior to 2015. Even if they
7 come in for a rate case prior to 2015, this matter will
8 not be included in that filing prior to 2015 if it's
9 still around. It could be fully amortized by then. And
10 for those reasons we stand by our recommendation of
11 deferring 31.5.

12 **CHAIRMAN CARTER:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

14 And I appreciate that. It's also my
15 understanding, I guess, as to Issue 1, staff is
16 recommending denial of the waiver, of the rule waiver;
17 and in Issue 2 staff is also recommending denial of the
18 request to charge storm hardening expenses against the
19 storm damage reserve, is that correct, for Issues 1 and
20 2?

21 **MR. MAUREY:** That is correct.

22 **MS. FLEMING:** If I may interrupt. With
23 respect to Issue 2, the way the issue is framed, that
24 is, if the Commission approves staff's recommendation on
25 Issue 1, then Issue 2 would be moot. However, if the

1 Commission chooses to grant the waiver on Issue 1,
2 staff's recommendation is that that amount should not be
3 charged to the reserve.

4 **COMMISSIONER SKOP:** All right. And just one
5 follow-on question with respect to Issue 3, which may or
6 may not be the subject of additional discussion. I
7 guess staff, in terms of what is recommended, I think
8 the company requested for 52.9 million and staff has
9 recommended that only the actual retail portion of the
10 2009 pension expense, namely the 31.5 million, be
11 allowed.

12 **MR. MAUREY:** To be deferred. That is correct.
13 The 31.5 is the current estimate of what that cost will
14 be at the end of the year. It could be a little higher
15 or a little lower. We're recommending that the
16 Commission approve the deferral of the actual amount.

17 **COMMISSIONER SKOP:** Okay. And under Statement
18 of Financial Accounting Standard Statement 87, those
19 deferrals can be created, is that correct?

20 **MR. MAUREY:** That's FAS 71 with respect to
21 deferrals.

22 **COMMISSIONER SKOP:** FAS 71, I'm sorry.

23 **MR. MAUREY:** And that does -- that reminds me
24 of one other point I wanted to make regarding the UWF
25 decision. That does speak to pensions, but it's not on

1 point with this case. In this case, the company is
2 asking for a deferral before the cost was incurred. In
3 UWF, the utility was asking for deferral of costs that
4 had already been occurred, and that violates 71. So we
5 don't believe the two are exactly on point.

6 **COMMISSIONER SKOP:** Okay. Just as a
7 follow-up, if I understand this correctly on the bottom
8 of Page 12 of the staff recommendation, FAS 71 does
9 permit the deferral of costs for the creation of a
10 regulatory asset under certain circumstances and those
11 require Commission approval of such deferrals, is that
12 correct?

13 **MR. MAUREY:** Commission preapproval, yes.

14 **COMMISSIONER SKOP:** Preapproval, okay. But
15 that would be discretionary on the part of the
16 Commission?

17 **MR. MAUREY:** Yes.

18 **COMMISSIONER SKOP:** Okay. Now, have there
19 been recent instances where the Commission has granted
20 deferrals, whether it be, you know, for pension expense?
21 You know, I have a list of cases before me, but I'm just
22 trying to gain a better appreciation for how often the
23 Commission uses its discretion to make such adjustments,
24 notwithstanding the concerns that Mr. Rehwinkel has
25 mentioned.

1 **MS. FLEMING:** Katherine Fleming for Commission
2 legal staff. Just offhand, we did just a quick search
3 as to instances where the Commission has approved the
4 deferral of regulatory assets. And just looking, we
5 probably have maybe a handful of recent cases just from
6 2006 through 2008. The Commission does have the
7 authority to set forth a regulatory asset and approve
8 this regulatory asset.

9 One thing that I do want to touch on is
10 something Mr. Rehwinkel had stated previously with
11 respect to the stipulation. He stated that Progress'
12 petition with respect to the pension does not seek
13 relief under Paragraph 7 of the stipulation which
14 addresses the 10 percent threshold. We agree with that.

15 Progress' petition is not with respect to
16 Section 7. Progress' petition clearly states that this
17 request for deferral will not change any rates and
18 charges. Staff looked at the stipulation. The
19 stipulation is silent as to the treatment of pension
20 expenses.

21 We further looked at the stipulation as a
22 whole under Section 4, which states that Progress may
23 not change rates and charges during the stipulation
24 period. This pension request is not a change in rates
25 and charges during the stipulation period. What they're

1 seeking to do is defer the pension expenses until some
2 point in time, and so that's where staff's analysis was
3 based on this recommendation with respect to the
4 stipulation. Our addressing Section 7 in the
5 recommendation was merely to address the points that OPC
6 raised in their response.

7 **COMMISSIONER SKOP:** Okay. And just as a
8 follow-up on that, Mr. Chair, to Ms. Fleming's point
9 that she just made. With respect to the request to
10 establish a regulatory asset, should that regulatory
11 asset be created or the Commission give the approval to
12 create such a regulatory asset for pension expenses, is
13 it correct to understand that would not be included as
14 an asset in the current rate case before the Commission.
15 That would be subsequently deferred for, you know, a
16 future point in time outside of the current pending rate
17 case and would not impact rates?

18 **MS. FLEMING:** Yes, that is correct,
19 Commissioner.

20 **COMMISSIONER SKOP:** Okay. And then with
21 respect to the discretion that the Commission has, at
22 least there does seem to be some sort of Commission
23 precedent supporting the creation of regulatory assets.
24 I have a list of cases in front of me, and I'm not
25 saying that it is or is not appropriate here, but I did

1 want to turn to a decision that was in PSC Order 080134,
2 which is an FPUC case, and ask staff to speak. I guess
3 in that the Commission authorized deferral accounting to
4 create a regulatory asset for off-balance-sheet
5 treatment for pension and benefit costs in accordance
6 with FAS 158, and I just wanted to look at that as well
7 as a prior FCG decision dealing with pension cost.

8 **MS. FLEMING:** If we can have a few moments,
9 please.

10 (Pause.)

11 **MS. FLEMING:** Commissioner, may I have you
12 state the docket number again?

13 **COMMISSIONER SKOP:** Yes, I'm sorry. The order
14 number that I have, or the docket number was 080029-PU.
15 That was FPUC. The order number was PSC-08-0134-PAA-PU.

16 **MS. FLEMING:** Okay. We have it in front of
17 us. With respect to this order, it's very similar on
18 point to what Progress is requesting. But here in this
19 order the Commission's finding is that they authorized
20 FPUC to use deferral accounting to create a regulatory
21 asset or liability to recognize and offset the balance
22 sheet treatment for pension and other post-retirement
23 benefit costs the company must record in accordance with
24 FAS 158. And the Commission also stated that the
25 approval to record the regulatory asset or liability for

1 accounting purposes does not limit the Commission's
2 ability to review the amounts for reasonableness in
3 future rate proceedings.

4 **COMMISSIONER SKOP:** Okay. And then turning to
5 the FCG order, and I guess the docket number was
6 060657-GU, PSC Order PSC-07-0913-PAA-GU. I guess that
7 FCG was authorized to use deferral accounting to create
8 a net regulatory asset to recognize accelerated
9 treatment for pension costs that resulted under -- that
10 they had to record under FAS 78 as a result of an
11 actuarial study. Is that generally correct?

12 **MS. FLEMING:** That's correct. And one thing I
13 would also point out, within that order the Commission
14 also -- I guess the company agreed to have a five-year
15 stay-out period, so it is similar to in this instance
16 where Progress will not seek the recovery of these
17 assets until 2015, or not prior to 2015.

18 **COMMISSIONER SKOP:** Thank you.

19 Mr. Chair, I'll yield to questions from my
20 colleagues.

21 **COMMISSIONER ARGENZIANO:** Mr. Chair.

22 **CHAIRMAN CARTER:** Commissioner Argenziano,
23 you're recognized.

24 **COMMISSIONER ARGENZIANO:** A question for staff
25 in regards to something staff had explained before. If

1 Progress is not asking to amend base rates, what they
2 are asking to do is defer an expense into the future
3 with no impact, I guess, on the current rates today, and
4 yet Section 7 says the petition to amend rates, and if
5 you're not doing that here, how does that apply? Why
6 would that even apply if it's not amending rates at this
7 time and projecting -- you know, deferring rates to the
8 future? How does it work? How do you -- explain that
9 to me?

10 **MS. FLEMING:** Commissioner Argenziano, this is
11 Katherine Fleming with legal staff. Staff did not apply
12 Section 7 of the stipulation to its analysis in this
13 recommendation because Progress did not utilize Section
14 7 as the basis for this filing. Staff merely was
15 responding to OPC's arguments within its filing
16 addressing Section 7. Staff --

17 **COMMISSIONER ARGENZIANO:** I'm sorry, but isn't
18 that a part of the stipulation that needs to be
19 addressed?

20 **MS. FLEMING:** Yes.

21 **COMMISSIONER ARGENZIANO:** How can you just not
22 pay attention to that?

23 **MS. FLEMING:** Well, I guess our staff's point
24 is that Section 4 as you just -- well, you just stated
25 that this does not affect rates and charges, and Section

1 4 clearly addresses the change in rates and charges
2 through the stipulation period. So we feel that this
3 pension issue falls outside of the term of the
4 stipulation. However, if Progress wanted to file this
5 filing as a limited proceeding, Progress would have the
6 opportunity to file it because their earnings are still
7 below the 10 percent threshold and they would be able to
8 utilize Section 7 as their basis for their filings.

9 In that instance, if Progress would have filed
10 it as a limited proceeding, then Progress could -- if
11 the Commission were to approve this request, Progress
12 could increase the rates to the customers at the time
13 that the approval was given by the Commission.

14 In this case, there will not be any increase
15 in rates and charges to the customers. They are seeking
16 a deferral into some point in the future.

17 **COMMISSIONER ARGENZIANO:** But I guess I'm
18 looking at it that if Section 7 -- I guess I'm looking
19 at it the other way. I'm looking at it that if Section
20 7 says that it's a petition to amend rates and Progress
21 is not doing that, then it should be -- there should be,
22 to me, a no vote, because they're not doing that,
23 they're deferring it. So it shouldn't even be
24 considered. Isn't that another way of looking at it?

25 **MS. FLEMING:** I believe we're getting at the

1 same point. You are correct, it is not a petition to
2 amend rates. So it is not within -- it doesn't fall
3 within Section 7. However --

4 **COMMISSIONER ARGENZIANO:** I think I'm looking
5 at it differently than you are. I think what I'm
6 saying, since they're not doing that, and they're trying
7 to go around Section 7, that since they're not affecting
8 the current rates, then there's no standing to me. It's
9 not within the stipulation. And I think you're saying
10 that we're going to not look at that Section 7 because
11 they're not going to impact rates today. And I think
12 I'm saying something different than you are, so I guess
13 we just have a disagreement on that. That's okay. I'll
14 have another question. I'll defer to someone else
15 asking questions. Thank you.

16 **CHAIRMAN CARTER:** Thank you. Commissioners?
17 Commissioner Skop.

18 **COMMISSIONER SKOP:** I guess I would ask my
19 colleagues, maybe to narrow the issues, are there any
20 specific questions as to Issues 1 and 2, or points of
21 discussion as to the staff recommendation?

22 **CHAIRMAN CARTER:** Commissioner Edgar, you're
23 recognized.

24 **COMMISSIONER EDGAR:** Just for clarification,
25 Commissioner Skop, did you ask of Issues 1 and 2?

1 **COMMISSIONER SKOP:** Well, I think 2 becomes
2 moot if the Commission --

3 **COMMISSIONER EDGAR:** Right. Okay. I just
4 wasn't sure I heard you correctly. If I may just jump
5 in --

6 **CHAIRMAN CARTER:** You're recognized.

7 **COMMISSIONER EDGAR:** -- I would say I don't
8 have a preference as to if we take up the issues as a
9 whole or separate them, but I am comfortable saying at
10 this time that the staff recommendation on 1 and 2 is
11 something that I strongly favor. I would not be
12 comfortable with a request to grant the waiver on the
13 storm reserve rule. I think that, in my own opinion,
14 that the rule is quite clear. I believe we had some
15 amendments to it only a few years ago with full
16 participation. And to steal a phrase, I think the rule
17 speaks for itself, and I would not be comfortable with a
18 waiver. So with that said, I am comfortable voting for
19 myself for the staff recommendation on 1 and 2.

20 **COMMISSIONER ARGENZIANO:** Mr. Chair.

21 **CHAIRMAN CARTER:** Commissioner Argenziano.

22 **COMMISSIONER ARGENZIANO:** Before any motions,
23 I'm not done with questions. Going back to the question
24 I asked staff, and before there's motions made, I'd like
25 to ask a couple of other questions.

1 **CHAIRMAN CARTER:** You're recognized.

2 **COMMISSIONER ARGENZIANO:** And as far as the
3 storm issue, I think that was a given. I think I can
4 see that was -- I won't even elaborate on it. I think
5 everybody figured that that wouldn't be granted. I
6 shouldn't say everybody. Myself, in studying it, I
7 figured that what would happen is we wouldn't grant
8 that, but the second part would be granted, not by me,
9 but that's the way it looked like it was going to wash
10 out, in my opinion.

11 But I need to go back to staff, asking what I
12 asked before about the stipulation. It sounds like what
13 the staff is saying is that you can just ignore the
14 language of the stipulation and just decide that the
15 company can file anything that they really want and it
16 just makes no sense to me. And I guess what staff is
17 saying is that the company can file the petition they
18 want outside of the stipulation, and when it seems to me
19 that the intent of the stipulation was to prohibit that.
20 So how does that benefit the ratepayers? There's no
21 changes in rates, but the company can file to defer
22 stuff to outside of the stipulation and then change
23 rates. And that's the way I see it. And I guess I keep
24 going back trying to look at my notes as to what staff
25 had said, and I just don't -- I don't find it credible,

1 the explanation I'm getting from staff. How do you go
2 outside of the stipulation? And I just -- I'm having a
3 very hard time with that.

4 **MS. FLEMING:** Commissioner Argenziano, I'll
5 try again. Staff is not going --

6 **COMMISSIONER ARGENZIANO:** You need to try
7 again, because that wasn't good.

8 **MS. FLEMING:** Okay. Well, with all due
9 respect, I'll try my best.

10 Staff did not go outside the stipulation. It
11 is clearly stated that this request does not affect
12 rates and charges. Section 4 --

13 **COMMISSIONER ARGENZIANO:** Okay. All right.
14 You know what, forget it. Don't even give me your
15 answer because you're just going to repeat the same
16 thing. You are ignoring Section 7 of the stipulation,
17 and you are allowing -- you're saying it's okay is a
18 manipulation of words, in my opinion. It's okay to go
19 outside of the stipulation because they're not going to
20 do the interim rates today, it will be somewhere down
21 the line in the future. I just totally disagree. I
22 think you're so off the mark, and I don't even need you
23 to repeat it anymore.

24 Thank you.

25 **CHAIRMAN CARTER:** Commissioners, any further

1 questions? Any further questions?

2 Commissioner Skop, you're recognized.

3 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

4 I guess as to Issue 1, I would move to
5 adopt -- at the appropriate time move to adopt the staff
6 recommendation as to Issue 1 to deny the request for a
7 waiver.

8 **COMMISSIONER EDGAR:** Second.

9 **CHAIRMAN CARTER:** It has been moved and
10 properly seconded.

11 Commissioners, any further discussion on
12 adopting staff's recommendation on Issue 1?

13 Hearing none. All in favor, let it be known
14 by the sign of aye.

15 (Simultaneous vote.)

16 **CHAIRMAN CARTER:** All those opposed, like
17 sign?

18 Show it done.

19 Commissioners, that means that Issue 2 is
20 moot, if that's the right word. We are now -- I guess
21 that would put us on Issue 3.

22 **COMMISSIONER EDGAR:** Mr. Chairman, if you're
23 open to a motion, I can do that, but I can also wait for
24 further discussion; whatever is your pleasure.

25 **CHAIRMAN CARTER:** Give me two seconds. Let's

1 take two seconds. (Pause.)

2 Commissioner Edgar, you're recognized.

3 **COMMISSIONER EDGAR:** Thank you, Mr. Chairman.

4 From the discussion that we have had just over
5 the past little bit, as I said a few moments ago, Issue
6 1 I personally felt very strongly about. Issue 3 I
7 think is a little murkier, a little grayer in my own
8 mind. However, for the reasons that the staff has laid
9 out in the analysis and that have been discussed in
10 greater detail this afternoon, at this point I would
11 move to adopt the staff recommendation for Issue 3.

12 **COMMISSIONER SKOP:** Second.

13 **CHAIRMAN CARTER:** Commissioners, it has been
14 moved and properly seconded. Any further debate?

15 Commissioner Skop, you're recognized.

16 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

17 I think, like I say, Issue 1 was a slam dunk
18 to me. There was no basis to grant the waiver and no
19 basis for relief. I think just to better articulate my
20 reasoning as to Issue 3, I know that the settlement
21 agreement, unfortunately, as Mr. Rehwinkel and the
22 intervenors have alluded to, is subject to debate and
23 construction as to what the parties meant when they
24 agreed to enter into the agreement.

25 And, again, I think I'm going to save, you

1 know, discussion of the Commission's prior decision
2 should that come before me again, but I feel very
3 strongly the Commission made the right decision before
4 for reasons that I have before me, but I'll skip the
5 discussion.

6 With respect to Issue 3, I think that what I'm
7 torn with is that here we're being asked to do something
8 that has consistently been done by the Commission in the
9 past. We have done it for FPL in Glades, that was a
10 different issue. We have done it for FPUC on pension
11 deferral. We have done it on FCG for pension deferral.
12 We have done it for TECO on similar orders, so it's
13 something that comes before the Commission quite often.

14 I think that some of the comfort that I have
15 in terms of granting the request is that PEF, as adopted
16 in the staff recommendation that's the subject of the
17 motion, should not be allowed to recover the item
18 through a base rate prior to 2015. So, again, there's
19 no immediate rate impact. PEF has agreed it will not
20 earn a carrying cost on the regulatory asset that's
21 created, so those are some safeguards that I would
22 expect as a matter of course in adopting any such sort
23 of request to create a regulatory asset that, you know,
24 has benefits not only to the company, but benefits to
25 the consumer.

1 I guess the crux of it comes down to how do
2 you interpret the settlement agreement. And,
3 unfortunately, there is that disagreement there, and I
4 can't help that. I wish that the settlement agreement
5 was embraced by the parties and it would just expire and
6 we would have a fully vetted rate case; but, again,
7 there seems to be substantial disagreement on that
8 issue. And when it comes down to interpretation of what
9 the agreement says, you know, I've listened to some of
10 the parties, I've read the agreement several times, I've
11 listened to the staff recommendation, and it seems to be
12 that, you know, in contract law the language would be
13 could be construed against the drafter. Unfortunately,
14 I don't know exactly who the drafter is. It is probably
15 joint drafting.

16 But, could it have been drafted better?
17 Absolutely. But, again, I'm trying to do the best thing
18 that I feel is appropriate to do in light of many
19 countervailing considerations, not just the agreement.
20 I'm trying to be fair, and I know everyone doesn't
21 always agree with the decisions that I or the Commission
22 makes, but we're in the ones in the chair that has to
23 make the hot -- I mean the difficult decisions, and
24 ultimately be accountable for them.

25 But, in this case, certainly the request on

1 Issue 3 to create a regulatory asset is at the
2 discretion of the Commission. It's supported by
3 regulatory accounting practice, financial accounting
4 practice, and there is substantial Commission precedent
5 supporting such past decisions. So, again, I think that
6 in light of the safeguards that staff has made in the
7 recommendation, that is the basis for why I seconded the
8 motion.

9 I feel it's appropriate to create a regulatory
10 asset. The asset is a fraction of what the company
11 requested, 31.5 million versus the 52.9, and there is no
12 direct rate impact for the foreseeable future as a
13 result of creating that regulatory asset.

14 **CHAIRMAN CARTER:** Commissioner Argenziano,
15 we're in debate on Issue 3.

16 **COMMISSIONER ARGENZIANO:** Thank you, Mr.
17 Chair. I'm sorry, somehow I inadvertently cut myself
18 off on the discussion, and I understand that you've
19 voted on 1 and 2, and I would like to record that I was
20 yes on -- I would like to be recorded yes on 1 and 2,
21 and I will just give my comments on 3.

22 I think that -- I couldn't have heard it put
23 better than Mr. Rehwinkel did. I think he did a very
24 excellent job, and that is not taking sides, it is
25 taking the information at hand and looking at it

1 closely. And I think he expressed it exactly how I have
2 felt about it and how I have read it.

3 There is a stipulation. I don't care what the
4 PSC has done in the past. There have been many wrong
5 decisions that the past PSC has had in the past, and I
6 just don't go for that. I just think he hit the nail on
7 the head, and he couldn't have said it better.

8 I cannot agree with that. I think staff is
9 just wrong. I think that it's just -- I don't even
10 understand how staff can come up with just the
11 disregard, total disregard of a stipulation, a contract
12 that was there, and it just says what it says. And
13 instead of making it some type of legalese and more and
14 more complicated than it is, read it as it is written,
15 and it's very clear to me that Mr. Rehwinkel was right
16 on target. And that's my opinion. And you can take
17 that and do whatever you want with it, but that's my
18 opinion. I will be voting no on that.

19 **CHAIRMAN CARTER:** Thank you.

20 Commissioners, we're in debate.

21 Commissioner Skop, you're recognized in
22 debate.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

24 And also, too, I would like to commend Mr.
25 Rehwinkel. I thought his discussion was very good.

1 Unfortunately, at least from my legal perspective, there
2 is ambiguity in the settlement agreement that has caused
3 a source of contention amongst the parties. And, again,
4 it's incumbent upon the Commission to resolve that
5 ambiguity and that disagreement, but I do think that
6 that was well articulated, very thoughtful argument, I
7 just unfortunately feel that it's not that clear cut to
8 me, at least from a legal analysis.

9 **CHAIRMAN CARTER:** Any further debate?

10 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

11 **CHAIRMAN CARTER:** You're recognized.

12 **COMMISSIONER ARGENZIANO:** I think what I heard
13 Commissioner Skop say, and with all due respect, it is
14 his opinion, of course, and I respect his opinion. I
15 don't agree with it, but I think what he is asking is
16 that the Commission resolve an invented ambiguity.
17 That's the only way I can say it. And I just don't
18 agree. I think it is our job to look at -- and with all
19 due respect, again, Commissioner Skop, you have your
20 opinion of what it is, and you keep using the legal
21 opinion. It doesn't have to -- you don't have to go to
22 law school to read a contract, and I think that what Mr.
23 Rehwinkel did was give the information that shows that
24 this is what you use. And you may disagree or not, but
25 I just want it stated that I agree totally.

1 He made his point very, very well, and I think
2 that, you know, staff just -- again, it's a casuistic
3 view, I think, staff has taken, and I just don't agree.
4 So I just wanted to get that in there that my opinion is
5 he did his job in trying to give the Commission the
6 inputs that he felt were necessary for us to resolve
7 that issue. And because he did it so well, it's
8 resolved in my mind, I think, and I appreciate that.
9 Thank you.

10 **CHAIRMAN CARTER:** Thank you.

11 Commissioners, any further debate? Hearing
12 none. All in favor, let it be known by the sign of aye.

13 (Simultaneous vote.)

14 **CHAIRMAN CARTER:** All those opposed?

15 **COMMISSIONER ARGENZIANO:** Aye.

16 **CHAIRMAN CARTER:** Show it done.

17 Commissioners, for planning purposes --

18 **COMMISSIONER EDGAR:** Mr. Chairman, that brings
19 us to Issue 4.

20 **CHAIRMAN CARTER:** Okay. Let me say this
21 before we go to Issue 4, because I want to get
22 everybody's undivided attention. Before we go to Issue
23 4, you may drop out on me.

24 Look, we have got a good streak going here.
25 I'm saying if I can push staff a little bit, they can

1 probably be ready in about five minutes for the Internal
2 Affairs and we can go immediately to that.

3 With that, Commissioner Edgar, you're
4 recognized.

5 **COMMISSIONER EDGAR:** Staff recommendation on
6 Issue 4.

7 **COMMISSIONER SKOP:** Second.

8 **CHAIRMAN CARTER:** It has been moved and
9 properly seconded, staff recommendation on Issue 4.

10 We're in debate. Any debate? Any discussion?

11 Hearing none. All in favor, let it be known
12 by the sign of aye.

13 (Simultaneous vote.)

14 **CHAIRMAN CARTER:** All those opposed?

15 Show it done.

16 We are adjourned.

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STATE OF FLORIDA)

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CERTIFICATE OF REPORTERS


COUNTY OF LEON)

WE, JANE FAUROT, RPR, and LINDA BOLES, RPR, CRR, Official Commission Reporters, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

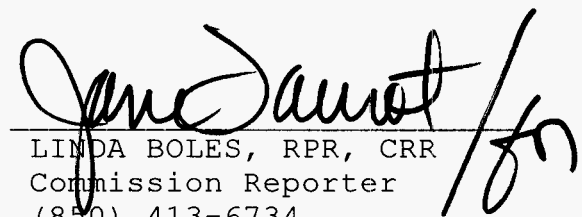
IT IS FURTHER CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript constitutes a true transcription of our notes of said proceedings.

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

DATED THIS 30th DAY OF JUNE, 2009.

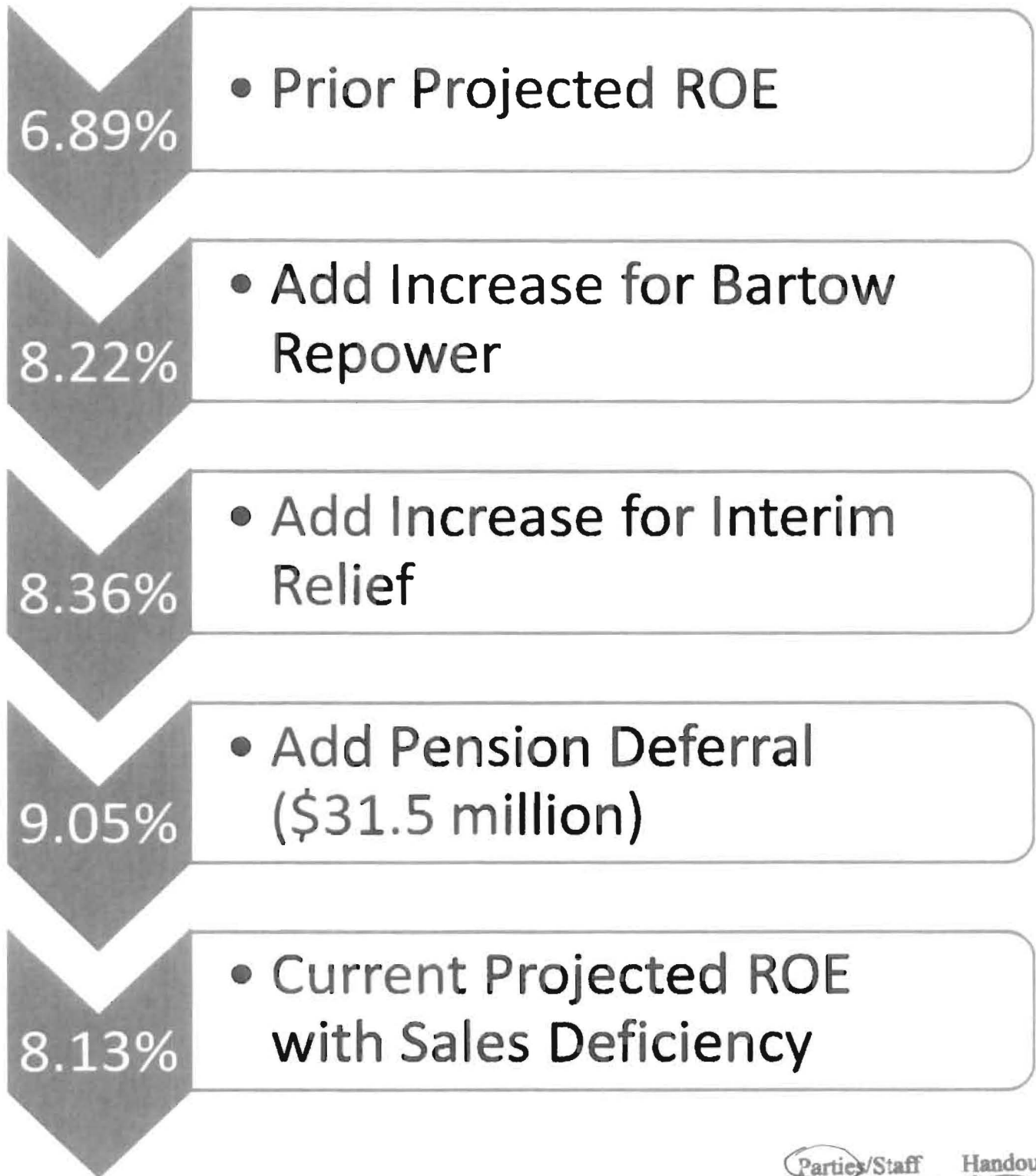


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Progress Energy Florida – 2009 Projection of Return on Equity



Parties/Staff Handout
Internal Affairs/Agenda
on 6/16/09
Item No. 6
090145-E1