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110085-EJ

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Sent: Thursday, May 19, 2011 2:49 PM
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Subject: Filing Docket 110085
Attachments: Docket 110085 Progress Energy Petition and Response.pdf

Docket 110085

In re: Petition for Declaratory Statement by Mediterranean Manors, Inc. regarding applicability of Progress Energy tariff provisions

1. Attached for filing in Docket 110085 is Progress Energy Florida, Inc.'s Petition for Leave to Intervene and Response to Petition for Declaratory Statement.
2. This filing is made on behalf of Progress Energy Florida, Inc.
3. This filing consists of 60 pages including exhibits.
4. This filing is being made by

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*5-19-11
 Parties
 added
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

5/19/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement by Mediterranean Manors, Inc., regarding applicability of Progress Energy tariff provisions. DOCKET NO. 110085-EI Submitted for Filing: May 19, 2011

PROGRESS ENERGY FLORIDA, INC.'S PETITION FOR LEAVE TO INTERVENE AND RESPONSE TO PETITION FOR DECLARATORY STATEMENT

Progress Energy Florida, Inc. ("PEF or the "Company"), pursuant to Rules 28-105.0027 and 28.106.205, Florida Administrative Code ("F.A.C."), hereby petitions for leave to intervene in the above-referenced docket because PEF's substantial interest will be affected by the Florida Public Service Commission's (the "Commission") declaration regarding the applicability of PEF's Tariff provisions in the instant matter. PEF also provides a Response to the Petition for Declaratory Statement to clarify the background of this matter and to make clear that there are certain disputed issues of material fact in the Petition for Declaratory Statement. In support thereof, PEF states as follows:

I. PETITION FOR LEAVE TO INTERVENE

A. BACKGROUND

1. Petitioner, Mediterranean Manors Association, Inc. ("Petitioner" or "Mediterranean Manors") is a condominium association. The Mediterranean Manors condominiums are a complex of multiple buildings in Dunedin, Florida. Mediterranean Manors is a customer of PEF to which Section 11 of the Company's Tariff applies. Section 11 of the Tariff addresses Multiple Occupancy Buildings ("MOB") and provides that PEF will provide electrical distribution service to the point of delivery. Under the

Company's policies and rules, PEF designates the point of delivery for MOBs.

Consistent with its policies, PEF has designated the point of delivery here as the pad-mounted transformer.

2. Mediterranean Manors filed a Complaint And Initiation of Formal Proceedings with the Commission on March 28, 2011. Mediterranean Manors alleges that PEF improperly repaired an underground electrical cable from the pad-mounted transformer to some of the Mediterranean Manors' buildings in 2006 and refused to replace the damaged cable in 2009. PEF disputes these alleged facts. Mediterranean Manors requested that the Commission determine that PEF was responsible for the replacement cable costs under the Florida Administrative Code and PEF Tariff.

3. Thereafter, Mediterranean Manors changed its complaint to a Petition for Declaratory Statement. Petitioner then filed an Amended Petition for Declaratory Statement on April 29, 2011 (the "Petition") including information requested by the Commission in correspondence dated April 4, 2011 and identifying PEF as the "Respondent." The requested relief, however, has not changed. Mediterranean Manors still requests this Commission to determine that PEF is responsible for the costs it paid to replace the damaged underground cable under the Florida Administrative Code and the Company's Tariff based on the same alleged, but disputed, facts. *See* Petition ¶ 1, ¶¶ 11-24.

4. Pursuant to Rule 28-106.205, F.A.C., in a declaratory statement proceeding, "[p]ersons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may petition the presiding officer for leave to intervene." PEF's substantial interests will

be affected by this proceeding because Petitioner is requesting the Commission to make a statement regarding PEF's responsibility for the costs it paid to replace the damaged underground cable under the Company's Tariff based on disputed facts. PEF has a substantial interest in the interpretation and applicability of its Tariff, especially based on disputed facts. *See In re United Water Florida, Inc.*, 2001 WL 882092 (Fla. P.S.C. July 24, 2001) (where the County's declaratory statement petition seemed to require the Commission to interpret provisions of the utility's service availability policy, the Commission determined that the utility's substantial interests may be affected by its decision and granted it leave to intervene).

B. PRELIMINARY INFORMATION.

5. The Petitioner's name and address are:

Progress Energy Florida, Inc.
299 1st Ave. N.
St. Petersburg, Florida 33701

6. Any pleading, motion, notice, order, or other document required to be served upon PEF or filed by any party to this proceeding should be served upon the following individuals:

R. Alexander Glenn
alex.glenn@pgnmail.com
John Burnett
john.burnett@pgnmail.com
Dianne Triplett
dianne.triplett@pgnmail.com
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733
(727) 820-5587
(727) 820-5519 (fax)

James Michael Walls
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Blaise N. Huhta
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Corporate Center Three at International Plaza
4221 W. Boy Scout Boulevard
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(813) 229-4133 (fax)

C. PRIMARILY AFFECTED UTILITY.

7. PEF is the utility primarily affected by the proposed request. PEF is an investor-owned electric utility, and is a wholly owned subsidiary of Progress Energy, Inc. The Company's principal place of business is located at 299 1st Ave. N., St. Petersburg, Florida 33701.

8. PEF serves approximately 1.6 million retail customers in Florida. Its service area comprises approximately 20,000 square miles in 35 of the state's 67 counties, encompassing the densely populated areas of Pinellas and western Pasco Counties and the greater Orlando area in Orange, Osceola, and Seminole Counties. PEF supplies electricity at retail to approximately 350 communities and at wholesale to about 21 Florida municipalities, utilities, and power agencies in the State of Florida.

9. In further support of this Petition for Leave to Intervene, PEF is also providing a Response to the Amended Petition for Declaratory Statement which lays out (i) a statement of material issues of disputed fact; (ii) a concise statement of the ultimate facts alleged; and (iii) a statement of the relief sought pursuant to Rule 28-106.201(2), F.A.C.

**II. RESPONSE TO AMENDED PETITION
FOR DECLARATORY STATEMENT**

PEF hereby files this Response to Mediterranean Manors' Petition For Declaratory Statement and states as follows:

A. BACKGROUND OF DISPUTE

10. On or about December 6, 2010, Mediterranean Manors as Plaintiff filed a two-count Amended Complaint in the Sixth Judicial Circuit Court of Pinellas County against PEF for a declaratory judgment and negligence. Mediterranean Manors requested a Declaratory Judgment from the Court that PEF had an obligation to maintain, repair, or replace the underground electrical cable from the pad-mounted transformer to the condominium buildings on its property that PEF allegedly damaged and refused to replace under a different section of PEF's Tariff. Mediterranean Manors based its negligence claim on the exact same allegations. Specifically, Mediterranean Manors claimed PEF was responsible for replacement of the damaged underground cable under Section 1.02 of the Company's Tariff. *See* Exhibit No. A, Mediterranean Manors' Amended Complaint.

11. On December 28, 2010, PEF responded with a Motion to Dismiss or Stay Proceedings. *See* Exhibit No. B, Motion to Dismiss/Stay. PEF argued in its Motion that Mediterranean Manors' Complaint was deficient because the Commission had primary jurisdiction to address the Tariff interpretation issues raised by Mediterranean Manors. PEF also argued that the allegations of the Complaint contradicted the Tariff attached to the Complaint because Mediterranean Manors was alleging that PEF had a duty to replace its underground cables based on Section 1.02, but that section was related to rate application purposes only and had nothing to do with underground service. PEF argued

that Section 11.06 governing MOBs was the section that applied and that it should be the Commission, not the Court, who interpreted the Tariff and resolved this dispute as to which section applied. *See* Exhibit No. B, PEF's Motion to Dismiss.

12. After hearing, the Court granted PEF's motion, abated the court proceeding, and referred the case to the Commission to decide two issues. The Court's Order stated "[t]he above styled case shall be abated pending a determination by the Florida Public Service Commission [(1)] as to what section of the Tariff between the parties is applicable to this matter and [(2)]for a determination of Defendant's service obligations to Plaintiff under the Tariff." *See* Exhibit No. C, Court Order.

13. Mediterranean Manors filed the instant Petition requesting a declaratory statement from the Commission. Mediterranean Manors abandoned its claims before the Circuit Court that Section 1.02 of the Company's Tariff controlled and instead now seeks a declaratory statement under Section 11 of the Company's Tariff. *See* Petition, ¶ 24. Mediterranean Manors, however, further seeks a declaratory statement that PEF is responsible for replacement of the underground cable from the pad-mounted transformer to the buildings under Section 11.06 of the Company's Tariff based on disputed facts regarding the alleged attempted repair and replacement of the damaged underground cable. Petition, ¶¶ 24 a-d. PEF agrees the Commission should determine and declare the applicable Tariff provision as the Circuit Court provided in its Order granting PEF's Motion to Dismiss Mediterranean Manors' Amended Complaint in the Circuit Court. PEF disagrees that a declaratory statement proceeding is appropriate to resolve the disputed issues of fact that Mediterranean Manors requests the Commission to resolve by declaratory statement in its Petition.

B. PURPOSE OF DECLARATORY STATEMENT FROM COMMISSION

14. Pursuant to Rule 28-105.001, a declaratory statement is:

[A] means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

15. Moreover the Commission has previously held that a declaratory statement is not the appropriate vehicle to review disputed issues of material fact. *See In re Tampa Elec. Co.*, 2004 WL 239416 (Fla. P.S.C. January 22, 2004) (“The only types of hearings allowed for declaratory statements are those not involving disputed issues of material fact,” citing to Rule 28-105.003, F.A.C.).

16. Here, the Court laid out what issues it felt needed to be determined under the Commission’s jurisdiction, specifically: 1) what Tariff provision applies to Mediterranean Manors, and 2) what service obligations PEF has to Mediterranean Manors under the Tariff once the appropriate Tariff provision is determined. Mediterranean Manors and PEF now apparently agree that Section 11.06 is the Tariff provision that applies to Mediterranean Manors. Under the Tariff and the Company’s Requirements for Electrical Service and Meter Installations, the Company shall designate the point of delivery. Based on Company policy, for MOBs like Mediterranean Manors, the point of delivery is the pad-mounted transformer. The point of delivery is not the Mediterranean Manors buildings.

17. Mediterranean Manors however has requested a declaration from the Commission regarding four issues, only two of which satisfy the issues the Court

deferred to the Commission. *See* Petition ¶¶ 24 a-c. These two issues are: question “a” how Mediterranean Manors should be classified under the Tariff, and question “b” what is the appropriate “point of delivery” with respect to Mediterranean Manors under the Tariff. *See* Petition ¶ 24 a-b. PEF agrees that these two issues are appropriate for determination by the Commission and can likely be determined based on a declaratory statement action if the appropriate ultimate facts are provided to the Commission to make the determination.

18. Conversely, the other two issues presented by Mediterranean Manors for declaration by the Commission are not appropriate for a declaratory statement. Question “c” requests a declaration from the Commission on whether PEF is actually responsible for maintenance of the underground electrical cables running from the pad-mount transformer to the building service entrance and requests a determination that, if Mediterranean Manors is classified as a MOB, whether that means under the Tariff PEF is responsible for all of its “facilities” including the underground cables at issue in the Petition. *See* Petition ¶ 24 c.

19. This question goes beyond the purpose of a declaratory statement. First, it is not appropriate to determine a party’s conduct in a declaratory statement action under Rule 28-105.001. Rule 28-105.001, F.A.C. expressly provides that “[a] declaratory statement is not the appropriate means for determining the conduct of another person.” As a result, the request to determine PEF’s responsibilities to replace the cable in question in a declaratory statement is inappropriate. Further, in the second part of question “c,” Mediterranean Manors combines an interpretation question with a question that encompasses a disputed issue of material fact. To explain, PEF agrees that the

Commission can determine what Mediterranean Manors should be classified as under the Tariff, but this does not mean the Commission can declare that PEF is responsible for “all of its facilities including the underground cable,” because that is a factual determination that must be based on facts that are not available to the Commission in this Petition and are in dispute between the parties. Specifically, PEF disputes that it originally installed the underground cable at issue, while Mediterranean Manors alleges in its Petition that the cable belongs to PEF. Indeed, PEF asserts that, pursuant to its policies and rules, it is not responsible to replace underground electrical cables for MOBs running from the pad-mount transformer to the service entrance on the customer’s side of the point of delivery.

20. In addition, question “d” is inappropriate for a declaratory statement action because it requests a legal determination on what PEF’s duty to notify is based on disputed facts. This question improperly pre-supposes the existence of numerous disputed issues of material fact, including whether PEF repaired the underground cables in 2006, and requests the Commission to declare that PEF had a duty to notify Mediterranean Manors. The Commission cannot answer this question without resolving disputed issues of material fact and determining the conduct of PEF. This is not an appropriate use of a declaratory statement pursuant to Commission rules. *See* Rule 28-105.001, F.A.C.

21. If Mediterranean Manors would like answers to these questions the appropriate procedure is a petition for initiation of a formal proceeding where the Commission may take evidence and resolve questions that involve disputed issues of material fact.

C. DISPUTED ISSUES OF MATERIAL FACT

22. To be clear, PEF asserts there are numerous disputed issues of material fact in Mediterranean Manors' Petition including:

- i. ¶ 10 – whether the construction permit for Mediterranean Manors was first issued in September of 1974. PEF has no information available to it upon which to confirm or deny this statement of fact;
- ii. ¶ 11 – Progress Energy, Inc. acquired Florida Power Corporation, not Florida Power & Light as alleged, in 2000, and Florida Power Corporation was subsequently known as Progress Energy Florida. In addition, PEF disputes that it installed the cables running from the pad-mount transformer to the service entrance to buildings five and six of Mediterranean Manors Condominium;
- iii. ¶ 13 – PEF disputes that it undertook to repair a set of underground electrical cables running from the pad-mount transformers to the service entrance on building five and six of Mediterranean Manors Condominium in January of 2006;
- iv. ¶ 14 – PEF disputes that it spliced and repaired the cables in question;
- v. ¶ 15 – PEF disputes Mediterranean Manors characterization that PEF did not provide any indication that it was not responsible for the underground cables;
- vi. ¶ 16 – PEF disputes that since 2006 no one else has touched or disturbed the cables in any way. Upon information and belief, PEF

states that in or about 2008 Mediterranean Manors was required to fix a sewer line. Its contractor, while working on the sewer line that was in the same vicinity of the underground cable in question, nicked the underground cable during that contractor's repair of the sewer line;

- vii. ¶ 17 – PEF disputes that an explosion on August 26, 2009 occurred at the “exact location” of the alleged 2006 repair and disputes Mediterranean Manors characterization of the fire and explosion;
- viii. ¶ 18 – PEF disputes Mediterranean Manors characterization of the time it took PEF to arrive and shut off the electricity at the Mediterranean Manors complex on August 26, 2009; and
- ix. ¶ 23 – PEF disputes Mediterranean Manors characterization of the correspondence between the parties and states that the correspondence themselves are the best evidence of their contents.

D. ULTIMATE FACTS

23. PEF states that the ultimate facts necessary for the Commission to make a declaratory statement regarding the questions presented in ¶ 24 a-b are as follows:

- i. Mediterranean Manors is a current customer of PEF and was a customer of PEF in both 2006 and 2009.
- ii. Based on its electric bills and description of the complex as alleged in the Petition (¶ 9 “comprised of eleven Condominiums located in Dunedin, Florida, with a total of twenty-seven buildings that house four hundred units.”) Mediterranean Manor is a Multiple

Occupancy Building or MOB and is subject to Section 11 under the Company's Tariff.

- iii. Under the Tariff and the Company's Requirements for Electrical Service and Meter Installations (Blue Book), available at <http://www.progress-energy.com/custservice/flares/builders/installs/index.asp>, which is incorporated into the Tariff by reference, PEF shall designate the point of delivery. Consistent with its policies, PEF designated the point of delivery as the pad-mounted transformer or secondary pedestal.

E. RELIEF REQUESTED

24. Under Rule 28-105.001, the Commission should resolve the issues identified by Mediterranean Manors in ¶ 24 a-b. It is PEF's position that both Mediterranean Manors and PEF agree that Mediterranean Manors should be classified as a MOB and that consequently, Tariff Section 11.06 applies. Further, under Company policy, the "point of delivery" is defined as the secondary side of the pad-mount transformer. This means PEF is not responsible for underground electrical cables for MOBs like Mediterranean Manors that run from the pad-mounted transformer to the service entrance on the customer's side of the point of delivery.

25. The Commission should decline to resolve the issues identified in ¶ 24 c-d because these issues contain material issues of disputed fact which are not appropriate for a declaratory statement determination. Alternatively, the Commission should refer this dispute to a formal proceeding for investigation and adjudication.

III. CONCLUSION


26. The Commission should grant PEF leave to intervene in this docket based on its substantial interests being affected.

27. The Commission should grant the relief requested and resolve the issues identified in ¶ 24 a-b. The Commission should open a formal proceeding to investigate and resolve the issues identified in ¶ 24 c-d, not including any damages claims.

WHEREFORE, for all the reasons provided in this Petition and Response, PEF respectfully requests that the Commission grant PEF's Petition for Leave to Intervene and also grant PEF's relief requested.

Respectfully submitted this 19th day of May, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2011, a true and correct copy of the foregoing was served via electronic and U.S. mail on the following:

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Daniel J. Greenberg, Esquire
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Attorney

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION
CASE NO. _____

MEDITERRANEAN MANORS ASSOCIATION, INC.
a Florida not-for-profit corporation,
Plaintiff,

vs.

PROGRESS ENERGY FLORIDA, INC., a Florida corporation,
Defendant.

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

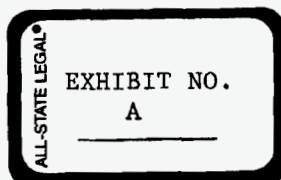
Plaintiff, MEDITERRANEAN MANORS ASSOCIATION, INC., ("Plaintiff" or "Mediterranean Manors") a Florida not-for-profit corporation, by and through its undersigned counsel, files this action against Defendant, PROGRESS ENERGY FLORIDA, INC., ("Defendant" or "Progress Energy") a Florida corporation and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for damages that exceed \$15,000.00 exclusive of interest, costs and attorney's fees.
2. Pursuant to Florida Statute Section 48.193, venue is proper in this County, which is where Defendant conducts business, where the cause of action accrued, and where the real property that is the subject of this litigation is located.

THE PARTIES

3. Plaintiff, MEDITERRANEAN MANORS ASSOCIATION, INC., is a not-for-profit corporation incorporated under the laws of the State of Florida and doing business in Pinellas County, Florida.



4. Defendant, PROGRESS ENERGY FLORIDA, INC., is a corporation incorporated under the laws of the State of Florida and doing business in Pinellas County, Florida.

FACTUAL ALLEGATIONS

5. Mediterranean Manors is comprised of eleven Condominiums located in Dunedin, Florida, with a total of twenty-seven buildings that house four hundred units.

6. Plaintiff is the condominium association responsible for the operation of common elements of all eleven Condominiums and is authorized to bring suit on behalf of the unit owners pursuant to Florida Rule of Civil Procedure 1.221.

7. Defendant provides utility services to Mediterranean Manors.

8. In and around January 2006, Defendant undertook to repair a set of underground electrical cables running from a transformer to buildings five and six of Mediterranean Condominium IX, a Condominium, which collectively house seventy-two units.

9. During the course of the 2006 repair, Defendant spliced and repaired the cable in question.

10. At the time of the 2006 repair, Defendant did not disclaim responsibility for maintaining or repairing the underground cable.

11. Defendant continued to provide uninterrupted utility services to Mediterranean Manors after the 2006 repair, and neither Defendant nor any third party, including Plaintiff, touched or disturbed the underground cables in any way.

12. On or about August 26, 2009, an electrical explosion occurred at the exact location of the 2006 repair. A jet of fire approximately five feet tall shot out of the ground.

13. Witnesses called 911 and the Dunedin Fire Department was dispatched to the scene. The Fire Department called Defendant and instructed them to shut the power off to the

affected cable. It took Defendant approximately one hour to show up to the property, and approximately another two hours to shut the power off at the affected area.

14. On or about August 26, 2009, Plaintiff and Defendant examined the cables, and three noticeable splices were observed in the cables in the immediate area of the explosion. At that time, Defendant informed Plaintiff that Progress Energy was no longer responsible for the damaged cables.

15. As a result of Defendant disclaiming responsibility for its previous repair, Plaintiff engaged Dunedin Electric to assume control of the situation.

16. Working through August 27, 2009, Dunedin Electric was able to make the necessary repairs, replacing the cables between the transformer and the meters and bringing the system up to code.

17. The total cost of the services performed by Dunedin Electric was approximately \$70,057.00.

18. All conditions precedent to the commencement and prosecution to final judgment of this civil action have taken place, have been performed, or have been waived or excused by Defendants.

19. Plaintiff has been compelled to engage the services of the undersigned attorneys and is obligated to pay them a reasonable fee.

**COUNT I
(Declaratory Judgment)**

20. Paragraphs 1 through 19 are incorporated herein by reference.

21. Florida Administrative Code Section 25-6.037 states:

Each utility, unless specifically relieved in any case by the Commission from such obligations, shall operate and maintain in safe, efficient, and proper condition, pursuant to the standards referenced herein, all of the facilities and equipment used in connection with the production

transmission, distribution, regulation, and delivery of electricity to any customer up to the point of delivery. The utility is also responsible for the safe, efficient measurement of electrical consumption consistent with test procedures and accuracies prescribed by the Commission.

22. Florida Administrative Code Section 25-6.003(2)(d), defines "Point of Delivery"

as:

The first point of connection between the facilities of the serving utility and the premises wiring.

23. Florida Administrative Code Section 25-6.033 states in relevant part:

(1) Each utility may adopt such additional non-discriminatory rules and regulations governing its relations with customers as are necessary and which are not inconsistent with these rules or orders of the Commission.

24. Section 1.01(7) of Defendant's Tariff defines residential "Point of Delivery" as "the point of attachment where the Company's (Defendant's) service drop is connected to the Customer's (Plaintiff's) service entrance." (See Tariff attached as Exhibit "A" and incorporated herein).

25. Pursuant to Section 1.02 of Defendant's Tariff, Mediterranean Manors qualifies as "Residential" because Mediterranean Manors is a condominium association in which: a) 100% of the energy is used exclusively for the residential co-owner's benefit; b) none of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee; c) each point of delivery is separately metered and billed; and d) a responsible legal entity is established as the Customer to whom Progress Energy can render its bill(s) for service.

26. Accordingly, the point of delivery in the instant matter should be defined under Section 1.01(7) of Defendant's Tariff as "the point of attachment where the Company's (Defendant's) service drop is connected to the Customer's (Plaintiff's) service entrance." The service entrance in this case being the meters attached to buildings five and six.

27. This interpretation is congruent with and compelled by the above-referenced Administrative Code sections.

28. With the point of delivery being defined as the meters attached to buildings five and six, Defendant is therefore responsible for maintenance of the equipment used in the delivery of electricity to the point of delivery, which necessarily includes the cables at issue.

29. The facts as alleged show the existence of a real and substantial controversy between the parties.

30. If a declaratory judgment is not granted the rights of the Plaintiff will be irreparably damaged.

31. Due to Defendant's actions, Plaintiff has been compelled to retain the services of the undersigned attorneys and is obligated to pay them a reasonable fee.

WHEREFORE, Plaintiff demands that this Court:

A. Enter an Order declaring the rights and duties of the parties with respect to the subject matter of this action; specifically determining that Defendant has an obligation to maintain, repair or replace the electrical cables in question.

B. Enter an Order awarding reasonable attorney's fees and costs to the Plaintiff;

C. Enter an Order awarding Plaintiff damages in the amount expended to repair the cables Defendant was obligated to repair.

D. Enter an Order for such other relief as this Court may deem necessary and proper.

**COUNT II
(Negligence)**

32. Paragraphs 1 through 31 are incorporated herein by reference.

33. This is a common law claim for negligence against Defendant.

34. Defendant owed Plaintiff a duty of reasonable care when it undertook repair the underground electrical cables in 2006.

35. Concurrently, Defendant owes Plaintiff an on-going duty to maintain the electrical cables pursuant to Florida Administrative Code Section 25-6.037 and Plaintiff's Tariff.

36. That Defendant breached its duty of care is evident by the fact that, in August 2009, the cables exploded and an electric fire occurred in the exact location of Defendant's original 2006 repair.

37. Plaintiff became aware of Defendant's negligence in August, 2009 when the electrical fire occurred.

38. Defendant's acts or omissions were a direct, proximate and legal cause of the August 2009 explosion and fire.


39. As a result of Defendant's negligence and subsequent refusal to repair the cables in August 2009, Plaintiff suffered monetary damages when it was forced to hire a third party to undertake the necessary repairs.

40. As a result, Plaintiff has been injured and damaged by the actions of Defendant.

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants for damages, together with prejudgment interest, and for such other relief as the Court deems appropriate.

DATED this ____ day of December, 2010.

JOSEPH R. CIANFRONE, P.A.

By: 
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Stephan C. Nikoloff, Esq./FBN 56592
Tiffany A. Grant, Esq./FBN 40100
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(727) 738-1100 FAX (727) 733-0042
Attorneys for Plaintiff

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GENERAL RULES AND REGULATIONS
GOVERNING ELECTRIC SERVICE

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ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning - Florida
EFFECTIVE:

OCT 01 2008

Exhibit A

GENERAL RULES AND REGULATIONS
GOVERNING ELECTRIC SERVICE

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Florida Power
A Progress Energy Company

SECTION NO. IV
ORIGINAL REISSUE SHEET NO. 4.005

**GENERAL RULES AND REGULATIONS
GOVERNING ELECTRIC SERVICE**

INTRODUCTION

This section of the Company's Tariff contains the rules and regulations governing electric service. These rules and regulations are promulgated in accordance with and supplementary to the Rules of the Florida Public Service Commission.

Technical specifications and requirements for electric service are published separately in a Company booklet entitled "Requirements for Electric Service and Meter Installations." A copy of this booklet is contained in the Appendix to this section and made a part of these General Rules and Regulations Governing Electric Service. The booklet is available upon request at any Florida Power Corporation office.

ISSUED BY: T. W. Raines, Jr., Director, Pricing Department
EFFECTIVE: January 24, 1990

PART I**DEFINITIONS AND CLASSIFICATIONS****1.01 Definitions:**

The following definitions set forth standard interpretations of certain terms used in these Rules and Regulations:

- (1) **Company:** Progress Energy, Florida Inc.
- (2) **Customer:** The user of the Company's electric service.
- (3) **Service:** The supply by the Company of electricity to the Customer, including the readiness and availability of electrical energy at the Customer's Point of Delivery at the required voltage and frequency whether or not utilized by the Customer.
- (4) **Service Drop:** That portion of the Company's facilities, between the pole or underground cable and the point of attachment at the service entrance, which brings the service from the Company's supply lines to the Customer.
- (5) **Service Entrance:** Wires and enclosures owned by the Customer and connecting the Customer's installation to the service drop.
- (6) **Customer's Installation:** Wires, enclosures, switches, appliances and other apparatus, including the service entrance, forming the Customer's facilities utilizing service for any purpose on the Customer's side of the point of delivery.
- (7) **Point of Delivery:** The point of attachment where the Company's service drop is connected to the Customer's service entrance. For underground service other than residential, the Customer's service entrance shall include conductors and raceway to a point designated by the Company generally the pad-mount transformer closest to the building.
- (8) **Connected Load:** The total rated capacity in horsepower (H.P.), and/or kilowatts (kW), and/or kilovolt amperes (kVA), of all electric equipment, appliances, apparatus and other current consuming devices which are connected in and to the Customer's installation and which may utilize service.
- (9) **Maximum Demand:** Highest integrated reading of Customer's electrical power requirements measured in kilowatts during the interval of time specified in the Rate Schedules.
- (10) **Temporary Service:** The supply of electricity by the Company to the Customer for construction purposes; or for fairs, displays, exhibits and similar services; and for other services which will be in use for less than a year.
- (11) **Rate Schedules:** The applicable schedules of rates and charges for service rendered which, from time to time, are on file with and approved by the Florida Public Service Commission having jurisdiction thereover, and under which service is rendered by the Company.

1.02 Service Classifications:

Service is classified for rate application purposes according to one of the following which best describes the Customer's electric service requirements:

- (1) **Residential.** Residential customers have the option of being served under one of the following rate schedules:
 - A. **Residential Service (RS-1)** Applicable to residential customers in a single dwelling house, a mobile home, or individually metered single apartment unit or other unit having housekeeping facilities, occupied by one family or household as a residence. The premises of such single dwelling may include an additional apartment with separate housekeeping facilities, as well as a garage and other separate structures where they are occupied or used solely by the members or servants of such family or household.



Residential (Continued):

Also, for energy used in commonly-owned facilities in condominium and cooperative apartment buildings subject to the following criteria:

- (a) 100% of the energy is used exclusively for the co-owner's benefit.
- (b) None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.
- (c) Each point of delivery will be separately metered and billed.
- (d) A responsible legal entity is established as the Customer to whom the Company can render its bill(s) for said service.

B. Residential Load Management (RSL-1): Applicable to customers eligible for residential service under Rate Schedule RS-1 who elect service under this rate schedule and who utilize any of the following electrical equipment:

- 1. Water Heater
- 2. Central Electric Heating System
- 3. Central Electric Cooling System
- 4. Swimming Pool Pump

C. Residential Time of Use (RST-1): Applicable at the option of the Customer, to residential customers otherwise eligible for service under Rate Schedule RS-1, provided that all of the electric load requirements on the Customer's premises are metered through one point of delivery.

- (2) **General Service Non-Demand:** Applicable to any customer, other than residential, for light and power purposes for which no other rate schedule is specifically applicable.
- (3) **General Service Demand:** Applicable to any customer, other than residential, for light and power purposes for which no other rate schedule is specifically applicable with a measured annual kWh consumption of 24,000 kWh or greater per year.
- (4) **Lighting Service:** Applicable to any customer for the sole purpose of lighting roadways or other outdoor land use areas; served from either Company or Customer owned fixtures of the type available under this rate schedule.
- (5) **Interruptible General Service:** Applicable to any customer, other than residential, for light and power purposes where service may be interrupted by the Company.
- (6) **Curtailable General Service:** Applicable to any customer, other than residential, for light and power purposes where the Customer agrees during a period of requested curtailment to curtail as a minimum the greater of: (a) 25 kW or (b) 25% of their average monthly billing demand (based on the most recent twelve (12) months or, where not available, a projection for twelve (12) months).
- (7) **Standby and Supplemental Services:** Applicable to any customer other than residential, having on-site generating equipment and requesting standby and/or supplemental services (firm, interruptible, curtailable). A customer requesting standby service is required to take service under this rate schedule if his total generating capability: (1) exceeds 100 kW, (2) supplies at least 20% of his total electrical load, and (3) is operated for other than emergency and test purposes.
- (8) **Temporary Service:** Applicable to any customer for temporary service such as construction, fairs, displays, exhibits and similar temporary purposes.

1.03 Rate Applications:

The Customer shall be billed in accordance with the regular rate schedule applicable to the Customer class for which service is rendered, or the Customer may elect to be billed under any optional rate schedule offering for the class, e.g. time of use. The Company will, upon request, advise any Customer as to the rate schedule most advantageous to his service requirements but does not assume responsibility for its selection in the event of changes in the Customer's requirements. All rate schedules are contained in Section No. VI of the Tariff and are available for inspection at any Company office. A Customer shall, upon request, be furnished a copy of the rate schedule applicable to his service.

PART II

AVAILABILITY AND ESTABLISHMENT OF SERVICE

2.01 Application for Service:

Information may be obtained at the nearest Company office as to the availability of service at the location where it is desired, and application for such service should be made by the Customer at such office at the earliest possible time so that details for furnishing service may be determined. Unless otherwise agreed in writing by the Company, and except as provided in Part III hereof, applications will be accepted only upon the condition that the Company shall be under no obligation to render service other than that character of service then available at the proposed Point of Delivery. Any such application or agreement shall be subject to all the provisions of these Rules and Regulations and of the Rate Schedules, and the terms and conditions thereof shall be binding upon the Company as well as upon the Customer. In order to insure that capacity is available in Company equipment to provide satisfactory service to the Customer, load data must be submitted with the application for service. Load data should include the anticipated Connected Load and the anticipated Maximum Demand.

2.02 Service Available:

Technical specifications for type and location of service are provided in the "Requirements for Electric Service and Meter Installations" contained in the Appendix.

2.03 Temporary Service:

The Company will, where it has a source of supply readily available, furnish service for temporary installations as provided for in the Company's Rate Schedule TS-1.

2.04 Auxiliary Service:

Auxiliary service is electric service provided to customers in lieu of that which might otherwise be provided by customer-owned generation for which the customer is not otherwise required to take service under the Company's Standby Service tariff. Auxiliary service is available and will be supplied by the Company under the applicable rate schedule. Parallel interconnected operation of customer-owned generation equipment is permissible only if the customer has executed a standard interconnection agreement with the Company in accordance with the Company's filed contract forms. In the absence of an executed interconnection agreement for parallel operation, the customer's facilities shall be so installed and maintained as to prevent operation of his power sources in parallel with those of the Company.

2.05 Premium Distribution Service:

Upon request by a Customer, the Company will install facilities capable of providing automatic delivery transfer to an alternate distribution circuit in the event of an outage of the principal distribution circuit. The Customer shall pay a monthly amount for such facilities in accordance with the specified rate for additional equipment contained in the applicable general service rate schedule under which service is provided.

The Company will determine the alternate circuit for Premium Distribution Service on the basis of the most economic and feasible circuit deemed available by the Company. If the Customer is desirous of a particular alternate circuit other than that deemed by the Company, the Company will give consideration to such request but shall not be required to establish such desired circuit as the alternate circuit. Where construction is necessary to extend the selected alternate circuit to an interconnection point with service on the Customer's property, the Customer shall pay this cost fully as a Contribution-in-Aid-of-Construction to the Company.

The Customer shall also be subject to an additional Monthly Demand Charge for Premium Distribution Service as stated in the applicable general service rate schedule.

PART III

CONTRIBUTION IN AID OF CONSTRUCTION

3.01 Contribution in Aid of Construction for the Installation of New or Upgraded Facilities:

Where an extension to or upgrade of existing facilities at any voltage level (other than a service drop and/or meter) is required to provide service to a Customer, the Company shall calculate under the formulas set forth below whether a contribution in aid of construction (CIAC) is due from the Customer. A CIAC would be due from the Customer as a result of expected incremental revenues from the Customer, together with revenues from other prospective customers to be served from such extension or upgrade, not being sufficient to afford a fair and reasonable return on the cost of making such extension or upgrade. The Company shall use its best judgment in estimating the revenue portion of the formulas which shall be based on an annual period ending not more than five years after the extension or upgrade is placed in service. For all of the formulas below, the costs shall include cost of removal and salvage, if applicable.

(1) Overhead Extension or Upgrade: The following formula shall be used to determine the CIAC owed by the Customer. If the application of this formula results in a negative value for CIAC_{OH}, the CIAC_{OH} amount shall be set to zero.

(a) For residential and general service non-demand customers, the CIAC shall be calculated as follows:

$$\text{CIAC}_{\text{OH}} = \boxed{\text{Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding service drops and meters}} - \boxed{\text{Four (4) years expected incremental base energy revenue}}$$

(b) For general service demand customers, the CIAC shall be calculated as follows:

$$\text{CIAC}_{\text{OH}} = \boxed{\text{Actual or estimated job cost for new poles and conductors and appropriate fixtures required to provide service, excluding service drops, and meters}} - \boxed{\text{Four (4) years expected incremental base energy revenue plus Four (4) years expected incremental base demand revenue}}$$

(2) (a) Residential Underground Extension or Upgrade: The following formula shall be used to determine the CIAC:

$$\text{CIAC}_{\text{UG}} = \boxed{\text{Estimated difference between the cost of providing the line extension or upgrade, including not only the line extension or upgrade itself but also the transformer, the service drop, and other necessary fixtures, with underground facilities vs. the cost of providing service using overhead facilities}} + \text{CIAC}_{\text{OH}} \text{ (as above)}$$

For underground residential service, the charges set forth in Part XI, Underground Residential Distribution Policy, provide the portion of the above formula developing the estimated difference in cost using underground facilities vs. overhead facilities.

(b) General Service Underground Extension or Upgrade: The following formula shall be used to determine the CIAC:

$$\text{CIAC}_{UG} = \left[\begin{array}{l} \text{Estimated difference between} \\ \text{the cost of providing the line} \\ \text{extension or upgrade, including} \\ \text{not only the line extension or} \\ \text{upgrade itself but also the} \\ \text{transformer and other} \\ \text{necessary fixtures, excluding} \\ \text{the service drop, with} \\ \text{underground facilities vs. the} \\ \text{cost of providing service using} \\ \text{overhead facilities} \end{array} \right] + \text{CIAC}_{OH} \text{ (as above)}$$

The Company will designate the point of delivery and the Customer will provide the service entrance conductors and raceway from the Customer's service equipment to the point of delivery designated by the Company at or near the building.

- (3) Extension for Temporary Service: The Customer shall pay extension costs for temporary service in accordance with Rate Schedule TS-1.
- (4) Extension for Street or Area Lighting Service: Service for street or area lighting is normally provided from existing distribution facilities. Where suitable distribution facilities do not exist, the following formula shall be used to determine the CIAC owed by the Customer. If the application of this formula results in a negative value for CIAC, the CIAC amount shall be set to zero.

$$\text{CIAC} = \left[\begin{array}{l} \text{Actual or estimated job cost of} \\ \text{new facilities required to} \\ \text{provide service excluding} \\ \text{lighting facilities} \end{array} \right] - \left[\begin{array}{l} \text{Four (4) years expected incremental base} \\ \text{energy revenue} \end{array} \right]$$

(5) CIAC True-Up:

Within 12 months of the in-service date of the new facility installation or upgrade, an initial end-use Customer that paid CIAC may make a one-time request to true-up the CIAC charged by the Company. The Company will true-up CIAC paid to reflect actual construction costs and actual base revenues received at the time the true-up request is made. The revenue portion of the CIAC true-up will be calculated by annualizing the actual base energy and demand revenues received by the Company as of the date of the true-up request and multiplying by four to derive four years expected base revenues. Depending on the true-up results, the initial end-use customer requesting a true-up may be entitled to a refund or charged additional CIAC.

(6) CIAC Prorate:

Within a three year period from the in-service date of the installation of the new or upgraded facilities ("the initial facilities"), the Company will prorate the CIAC paid by the initial end-use customer for the facility installation or upgrade to serve that customer. Prorating will apply to only CIAC payments of \$1,500 and above. Customers requiring more than a meter and a service drop for service from the initial facilities (e.g. additional poles or transformers) will be excluded from the CIAC prorate. The initial end-use customer will be charged the full amount of CIAC in accordance with this Part III. Additional customers served by the initial facilities will each pay their prorata share of the CIAC paid by the initial customer. The prorata share will be calculated by first determining the total number of customers involved by adding one (1), representing the initial customer, to the number of additional customers identified by the Company that could be served by the initial facilities. Then each customer's prorata share will be one divided by the total number of customers involved. The Company will refund the prorated collections to the initial end-use customer.



3.02 Route and Easement:

For new line extensions, upgrades or service drops, the Company shall select the most economical route, which may be a right of way or easement. Before the Company starts construction, the route chosen must be cleared of all trees, tree stumps and other obstructions by the applicant, at no charge to the Company and be suitable for Company use. The Company will use private property for any such extension or upgrade, once an easement suitable to the Company is granted by the owner of such private property to the Company, without cost, in accordance with the following provisions:

- (1) Private Property of Customer: Where more than one pole is located on a customer's property for the sole purpose of supplying service to such customer, an easement for all such poles and for any related facilities, including guys, overhead distribution circuits and overhang, must be furnished by the Customer. The entire length and width of the easement across the Customer's property must be cleared of trees, undergrowth, and other obstructions to access by the Company's vehicles and equipment, prior to installation of the service line by the Company.
- (2) Private Property of Third Party: Where, in order to provide service to a Customer, Company facilities are to cross over or be located upon private property not owned by such Customer, or where service to such Customer is to be provided from existing Company facilities so situated, an easement for all such facilities involved, including, but not limited to, poles, guys, overhead distribution circuits and overhang, if any, will be required to be obtained by the Customer prior to such facilities being installed by the Company.
- (3) Acquisition, Form and Cost: All such grants shall be obtained by the Customer upon the Company's standard form, property executed by the grantor, and shall be made without cost to the Company.

3.03 Installation by Customer:

The Customer's installation shall, in its entirety, be installed and maintained in accordance with the requirements of local ordinances pertaining thereto, or of authorities having jurisdiction thereover, or in the absence of such local ordinances or authorities in accordance with the requirements of the National Electrical Safety Code as set forth in Handbook H-43 of the National Bureau of Standards in its present form, or as subsequently revised, amended or superseded; provided, however, that service to any customer over lines and facilities not owned by the Company shall be at the sole option of the Company. Customer installations shall be in accordance with the following provisions:

- (1) Inspection by Authorities: The Company recommends that all wiring installations be inspected and approved by an authorized electrical inspector if available; and, were such inspection is required by local ordinance or authority, the Company cannot render service until such inspection has been made and formal notice from the inspecting authority of its approval has been received by the Company.
- (2) Inspection by Company: The Company reserves the right to inspect Customer's installation prior to rendering service, and from time to time thereafter; but the Company assumes no responsibility whatsoever for the Customer's installation as a result of any such inspection, and will not be responsible in any way for any defect in Customer's installation, or any part thereof, or for any damage which may result from any such defect.

3.04 Special Service Requirements:

The Company designs and installs its service facilities in accordance with the "Requirements for Electric Service and Meter Installations" contained in the Appendix. Where the Customer requests a more costly service arrangement, such as a remote point of delivery, excess transformer capacity, or any other special requirements, or high demand equipment, such as tankless water heaters, kilns, welders etc. The Company will provide such service if feasible and the Customer shall pay the cost in excess of the estimated cost of the standard design.

3.05 Relocation or Modification of Existing Facilities:

When, in the judgment of the Company a change in the use or layout of the Customer's premises makes the relocation or modification, but not an upgrade of the Company's existing facilities necessary, or when such relocation or modification is requested by the Customer and is consistent with sound utility practices, the Company will relocate or modify such facilities in a manner acceptable to the Company. The Customer shall pay the Company for all cost associated with any such relocation or modification based on an invoice prepared by the Company in accordance with standard estimation procedures, and if the relocation or modification is made at the Customer's request, such payment shall be made in advance. If a requested relocation or modification involves the conversion of an existing residential overhead service to an underground service lateral, the charges and provisions of Section 11.05 of these Rules shall apply.

PART IV

TERMS AND CONDITIONS OF SERVICE

4.01 Service Connection:

The Company's connection with the Customer's service entrance shall be made with such service drop and shall be backed up by such transformers and related facilities and equipment as may be necessary to supply adequate electric service to the Customer in accordance with the load data furnished by the Customer at the time of applying for service.

4.02 Access to Customer Premise:

The duly authorized agents of the Company shall have access at all reasonable hours to the premise of the Customer for the purpose of inspecting the Customer's installation; for installing, maintaining, inspecting or removing the Company's property; for reading meters; and for other purposes incident to the rendition or termination of service to the Customer. In acting hereunder, neither the Company nor its authorized agents shall be liable for trespass.

4.03 Protection of Company Equipment:

The Customer shall provide proper protection for the Company's equipment and facilities located on the Customer's premise, and shall permit no one but the Company's agents or persons authorized by law, to have access to the Company's equipment or facilities.

4.04 Continuity of Service:

The Company will use reasonable diligence at all times to provide continuous service at the agreed nominal voltage, and shall not be liable to the Customer for the complete or partial failure or interruption of service, or for fluctuations in voltage, resulting from causes beyond its control or through the ordinary negligence of its employees, servants, or agents, nor shall the Company be liable for the direct or indirect consequences of interruptions or curtailments made in accordance with the provisions of its rate schedules for interruptible, curtailable and load management service. The Company shall not be liable for any act or omission caused directly or indirectly by strikes, labor troubles, accidents, litigation, shutdowns for repairs or adjustments, interference by Federal, State, or Municipal governments, acts of God, or other causes beyond its control.

- (1) **Priority of Curtailment:** In an emergency, the Company may interrupt, curtail, or suspend electric service to all or some of its Customers; provided the Company is acting in good faith and exercising reasonable care and diligence, the selection by the Company of the customers to be interrupted, curtailed, or suspended shall be conclusive on all parties concerned, and the Company shall not be held liable with respect to any such interruption, curtailment, or suspension.
- (2) **Restoration of Service:** In the event of an interruption, curtailment or suspension of electric service from any cause, the Company reserves the right to safely determine the method of restoration of service and in establishing the priority of restoration within the shortest time practicable consistent with safety. The Company shall not be held to be in default of rendering adequate electric service because of the Company's preservation of system integrity for priority in the restoration of customer service.
- (3) **Notification of Interruptions:** Whenever service is interrupted, curtailed, or suspended for the purpose of performing planned construction work on lines or equipment, the work shall be done at a time, if at all practicable, which will cause the least inconvenience to the customers, and the Company shall attempt to notify in advance (except in cases of emergency) those customers who the Company knows may be affected.

4.05 Indemnification by Customer:

The Customer shall indemnify, hold harmless and defend the Company from and against any and all liability, proceedings, suits, costs or expense for loss, damage, death or injury to persons or property, in any manner directly or indirectly connected with, or growing out of the use or disposition of electricity by the Customer at or on the Customer's side of the Point of Delivery, unless such loss, damage, death or injury shall result from the sole negligence of the Company.

PART V**METERS****5.01 Installation and Maintenance of Meters:**

The Company will install and maintain, at its own expense, such standard meter or meters, and other metering equipment, as may be necessary to measure all electric energy sold to the Customer on a metered basis. If a self-contained meter enclosure is required it will be the customer's responsibility to furnish such equipment. All self-contained meter enclosures will be maintained or replaced by the customer. However, in the event of a service outage related to the meter enclosure, The Company will temporarily restore service, if possible, and advise the customer of his or her responsibility to repair or replace the enclosure. Title to meters and metering equipment shall be and remain in the Company, excluding self-contained meter enclosures. Technical specifications and requirements for metering, and self-contained meter enclosures are provided in the "Requirements for Electric Service and Meter Installations" contained in the Appendix.

5.02 Meter Seals:

All meters will be sealed by a representative of the Company. Such meter seals must not be removed, destroyed or tampered with by any person other than an authorized representative of the Company.

5.03 Testing of Meters:

Meters will be tested in accordance with regulations of the Florida Public Service Commission.

5.04 Tampering with Meters:

Unauthorized connections to and tampering with the Company's meters or metering equipment, or indications or evidences thereof, shall subject the Customer to prosecution under the laws of the State of Florida, to adjustment of prior bills for services rendered and liability for payment of the adjusted amount, and to liability for reimbursement to the Company of all extra expenses incurred by the Company as a result thereof, and to discontinuance of service until such indebtedness has been paid.

5.05 Provisions for Energy Pulse Data:

The Company upon request will provide for energy and/or time pulses to be transmitted from the Company's metering equipment to energy management systems. The Customer shall reimburse the Company for any cost associated with the installation of equipment solely used to supply pulses to the Customer. The billing of demand and/or energy will be based upon the Company's meter readings and not upon the pulse data being supplied.

PART VI
CUSTOMER UTILIZATION EQUIPMENT

6.01 General Principles:

The facilities of the Company are designed and maintained to supply adequate service to all customers using normal appliances and equipment included in the load data furnished by the customers, and the Company specifies only such requirements in respect of utilization equipment as are necessary to safeguard both the Customer and the Company to the end that service may be rendered to all customers with a maximum of safety and with a minimum of interruption or disturbance. Since the appliances and equipment installed or used by one customer may very materially affect the adequacy and continuity of service to other customers, and because the misuse of such appliances or equipment might constitute a fire hazard or endanger life, the Customer shall consult the Company concerning the attachment of any special or heavy use appliances or equipment to the Customer's installation.

The Company has promulgated regulations covering the use and installation of the most common types of utilization equipment in the "Requirements for Electric Service and Meter Installations" contained in the Appendix.

6.02 Protecting Customer Installation:

The Customer's installation shall be adequately protected with approved type fuses or circuit breakers in accordance with the requirements of local ordinances pertaining thereto, or of authorities having jurisdiction thereover or, in the absence of such local ordinances or authorities, the requirements of the National Electrical Safety Code; and, in order to safeguard both the property of the Customer and that of the Company, the Customer shall not overload or overfuse any service or branch circuit thereof.

6.03 Limitations on Customer's Installation:

Customer utilization equipment should be selected and used with the view of obtaining the highest practicable power factor; and no appliance or device which, in the opinion of the Company, is not properly constructed, controlled or protected, or may adversely affect the Company's service to other customers, shall be connected to the Customer's installation.

- (1) Voltage Fluctuation: All utilization equipment attached to the Customer's installation shall be such that starting and operating characteristics will not cause an instantaneous voltage drop of more than four percent of the standard voltage or cause objectionable flicker in other customers' lighting.
- (2) Motor Regulation: All motors connected to the Customer's installation shall be equipped with satisfactory starting devices to prevent abnormal voltage fluctuations, and shall be provided with devices which will protect the motor installation against under-voltage, over-load, phase failure and short-circuit.
- (3) Power Factor Correction: Customers shall provide power factor correction apparatus satisfactory to the Company on all low power factor lighting equipment, air conditioning equipment, and electric welding equipment.



6.04 Change In Customer's Installation:

Changes which in the opinion of the Company would adversely affect the normal operation of the Company's system or facilities shall not be made in the Customer's installation; and the Customer shall be liable for any damage resulting from a violation of this rule. Accordingly, the Customer shall give due notice to the Company of any proposed changes in the Customer's installation involving substantial increases or changes in the Customer's electrical requirements since failure to do so may affect the quality of the Customer's service as well as that of the other customers supplied from the same facilities.

6.05 Limiting Connected Load:

Where desirable or advisable, the Customer may arrange his wiring in such a manner that only a portion of the load may be served at one time. In such cases, the connected load to be used for the computation of charges shall be the largest load which can be served.

6.06 Accidental Grounds:

Company assumes no responsibility for accidental grounds upon the Customer's installation, but the Company will undertake, where practicable, to notify the Customer of such accidental grounds whenever the same are discovered by, or come to the attention of, the Company.



**PART VII
GUARANTEE DEPOSITS**

7.01 Deposit Requirement:

In order to guarantee payment for service rendered, the Customer shall provide the Company with a cash deposit or other acceptable guarantee such as a surety bond, letter of credit, or guarantee letter. For residential customers, the guarantor must be a customer of the Company with a satisfactory payment record. For non-residential customers, the guarantor needs not be a customer of the Company, but must be a bank, or insurance company, or other institution with proven financial capability to furnish such a guarantee. The total amount of the required deposit shall be equal to twice the Customer's average monthly bill (rounded to the nearest \$5.00), but no less than \$25.00. A deposit requirement may be waived for customers who have previously established a satisfactory payment record with the Company or meet the Company's requirements for the establishment of credit.

7.02 Refund of Deposit:

After a customer has had continuous service for a period of twenty-three (23) months and established a satisfactory payment record, the Company will refund a residential customer's deposit and at its option either refund or commence applying a higher rate of interest on a non-residential customer's deposit as provided for in Section 25-6.097(4) of the Florida Public Service Commission Rules. A customer is considered to have established a satisfactory payment record, if over the preceding twelve (12) months of service, the customer has not had a disconnection of service for non-payment of bill, made payment with a dishonored check, or had more than one (1) late payment notice. Any deposit, plus accrued interest, being held by the Company upon termination of service will be credited to the customer's final bill and any remaining balance refunded.

7.03 New or Additional Deposit:

The Company may require upon written notice of not less than thirty (30) days a new deposit, where previously waived or returned, or additional deposit in order to secure payment of current bills.

7.04 Interest on Deposit:

Interest will accrue on deposit amounts in existence for a continuous period of six (6) months or longer at the minimum rate provided for in Section 25-6.097(4) of the Florida Public Service Commission Rules. Accrued interest will be paid either as a credit on the Customer's June bill or as a payment upon refund of deposit, or upon final settlement of customer's account.



PART VIII

BILLING

8.01 Billing Period:

A bill for service will be rendered on a regular monthly cycle as scheduled by the Company. A normal billing month is an interval between scheduled meter reading dates and is approximately thirty (30) days.

8.02 Prorated Monthly Bills:

A normal monthly bill will be prorated (based on actual number of days vs. thirty (30)) if the meter reading date is advanced or postponed more than five (5) days from the scheduled read date.

All other types of bills (including initial, final, or reroute) will be prorated if they cover more or less than a regular monthly billing period (including the five-(5) day reading range).

8.03 Measurement and Evidence of Consumption:

Power and energy shall be measured for each point of delivery by one meter for each type of service rendered; and the Company's readings and records thereof shall be accepted and received, at all times and places as prima facie evidence of the quantity of electricity used by the Customer at the point of delivery.

(1) **Conjunctive Billing:** The Company does not permit conjunctive billing. Each point of delivery to the same customer constitutes a separate service, and bills for two (2) or more points of delivery to the same customer shall be calculated separately for each point of delivery; however, where more than one (1) meter is used to measure the same type of service, although only one point of delivery is involved, each such meter shall be calculated and billed separately, as though it were a separate service, until such time as the Customer rearranges his facilities to take all of the same type of service through a single meter.

(2) **Unread Meters:** When the Company is unable to read a meter due to circumstances beyond the control of the Company, such as inaccessibility of meters because of flood or stormy conditions, the Company may render a minimum or estimated bill.

8.04 Delinquent Bills:

Bills are due when rendered and become delinquent if not paid within twenty (20) days after the date of mailing or delivery. A late payment charge will be applied to accounts that have past due balances, in accordance with the Company's Rate Schedule SC-1. Non-receipt of bills by customer shall not release or diminish the obligation of the Customer with respect to payment thereof on time.

8.05 Vacating or Change of Occupancy:

When a customer vacates a premise served by the Company, or when a change of occupancy therein takes place, the outgoing customer shall notify the nearest office of the Company not less than three (3) days prior to the date of vacating or change, as the case may be; and the outgoing customer shall be held responsible for all electric service used on such premises until such notice is received and service is disconnected, or until application for service at said location has been made by a new customer and accepted by the Company, whichever first occurs.

8.06 Service Charges:

Service Charges shall be made for each establishment or re-establishment of service, and for each returned check, in accordance with the Company's Rate Schedule SC-1.

8.07 Adjustment of Bills:

Adjustment of bills shall be made in accordance with regulations of the Florida Public Service Commission.

PART VIII

BILLING
(Continued)

8.08 Net Metering for Customer-Owned Renewable Generation

For customers with renewable generation equipment that have executed an interconnection agreement with the Company whose customer-owned renewable generation is eligible for net metering as defined by FPSC rule 25-6.065, monthly billing will be prepared in the following manner:

- (1) At no additional cost to the customer, metering equipment will be installed by the Company capable of measuring the difference between the electricity supplied to the customer from the Company and the electricity generated by the customer and delivered to the Company's electric grid.
- (2) Meter readings will be taken monthly on the same cycle as required under the otherwise applicable rate schedule in accordance with normal billing practices.
- (3) The Company will charge the customer for energy used by the customer in excess of the generation supplied by customer-owned renewable generation for the entire billing cycle in accordance with the otherwise applicable rate schedule.
- (4) During any billing cycle, excess customer-owned renewable generation delivered to the Company's electric grid will be credited to the customer's energy consumption for the next month's billing cycle.
- (5) Regardless of whether excess energy is delivered to the Company's electric grid, the customer will be required to pay the greater of
 - i. the minimum charge as stated in their otherwise applicable rate schedule, or
 - ii. the applicable monthly customer charge plus the applicable demand charge for the monthly maximum 30-minute demand measured on the company's usage meter during the billing period in accordance with the otherwise applicable rate schedule
- (6) For customers whose otherwise applicable rate schedule is a time of use (TOU) rate, the generation supplied by customer-owned renewable generation to the Company will be measured by the distinct TOU periods of that rate schedule and offset customer usage in the current month or subsequent periods using the distinct TOU periods of that rate schedule.
- (7) Energy credits produced pursuant to section 4 above will accumulate and be used to offset the customer's energy usage in subsequent months for a period of not more than twelve months. After the end of each calendar year, the Company will credit the customer (on the February bill) for any unused energy credits at an average annual rate based on the COG-1, as-available energy tariff.
- (8) Excess energy consumption will be applied only to the service provided at the location of the renewable generation system and will not be applied to other locations or services at the same location that the customer may take from the Company.
- (9) When a customer leaves the Company's system, unused credits for excess kWh generated will be credited to the customer at an average annual rate based on the COG-1, as-available energy tariff.
- (10) The customer may, at their sole discretion, choose to take service under the Company's standby or supplemental service rate, if available. When a customer elects to take service under a standby or supplemental tariff, any excess consumption credited from prior periods in accordance with provision number 4 above, will be considered supplemental energy for billing purposes.

PART IX
LIMITATIONS OF SERVICE

9.01 **Confinement of Customer's Use:**

Electric service furnished to a customer shall be rendered *directly to the Customer through the Company's individual meter and shall be solely for the Customer's own use.*

9.02 **Resales Prohibited:**

In accordance with the laws of the State of Florida, the Company shall not be required to sell electricity to any customer for resale; and, except in the case of municipalities and rural electric cooperatives, no customer shall be permitted to resell any electric energy purchased from the Company.

9.03 **Sub-Metering:**

Where individual metering is not required under Section 25-8.049(9) of the Rules of the Florida Public Service Commission and master metering is used in lieu thereof, reasonable apportionment methods, including sub-metering, may be used by the customer solely for the purpose of allocating the cost of the electricity billed by the Company. Any fees or charges collected by a customer for electricity billed to the customer's account by the Company, whether based on the use of sub-metering or any other allocation method, shall be determined in a manner which reimburses the customer for no more than the customer's actual cost of the electricity billed by the Company.

9.04 **Crossing Public Ways Prohibited – Exception:**

No customer shall extend electric lines or facilities across or under a street or other public way in order to make electric energy available through one meter to a structure or facility on an adjacent track of land, except under the following conditions:

- (1) said structure or facility on adjacent land is at all times operated and utilized by the same customer for the same business or enterprise;*
- (2) electric service through such single meter is utilized solely by such customer;*
- (3) such single-meter electric service is otherwise permissible under applicable Company rules and regulations and applicable rate schedule;*
- (4) customer obtains written approval from the Company on plans, and any extension or revision thereof, for such single-meter service arrangement; and*
- (5) customer obtains and keeps currently effective any and all required permits from required public authorities for crossing of public ways with customer's electric facilities.*

9.05 **Attachments to Poles Prohibited:**

Customers and others are forbidden to use the Company's poles or other facilities for the purpose of fastening or supporting wires, signs, or things of any nature, or to locate any such things in such proximity to the Company's facilities as to cause, or to be likely to cause, interference with the Company's operations or a dangerous condition. The Company shall have the right to remove any unauthorized attachments without notice and without liability for damages arising from such removal.



PART X
DISCONTINUANCE AND WITHHOLDING OF SERVICE

10.01 Grounds for Discontinuance or Withholding of Service:

The Company may refuse or discontinue service to a customer under any of the conditions provided for under Section 25-6.105 of the Rules of the Florida Public Service Commission.

10.02 Notice of Discontinuance:

The Company will give the Customer as much written notice of discontinuance of service as may be reasonably practical.

10.03 Medically Essential Service:

For purposes of this section, a Medically Essential Service Customer is a residential customer whose electric service is medically essential, as affirmed through the certificate of a doctor of medicine licensed to practice in the State of Florida. Service is "medically essential" if the customer has continuously operating electric-powered medical equipment necessary to sustain the life of or avoid serious medical complications requiring immediate hospitalization of the customer or another permanent resident at the service address. The physician's certificate shall explain briefly and clearly, in non-medical terms, why continuance of electric service is medically essential and shall be consistent with the requirements of the Company's tariff. A customer who is certified as a Medically Essential Service Customer must renew such certification periodically through the procedures outlined above. The company may require certification no more frequently than once every twelve (12) months.

The Company shall provide Medically Essential Service Customers with a limited extension of time, not to exceed thirty (30) days, beyond the date service would normally be subject to disconnection for non-payment of bills (following the requisite notice pursuant to Rule 25-6.105(5) of the Florida Administrative Code). The Company shall provide the Medically Essential Service Customer with written notice specifying the date of disconnection based on the limited extension. The Medically Essential Service Customer shall be responsible for making mutually satisfactory arrangements to ensure payment within this additional extension of time for service provided by the Company and for which payment is past due, or to make other arrangements for meeting the medically essential needs.

No later than 12 noon one (1) day prior to the scheduled disconnection of service of a Medically Essential Service Customer, the Company shall attempt to contact such customer by telephone in order to provide notice of the scheduled disconnect date. If the Medically Essential Service Customer does not have a telephone number listed on the account, or if the utility cannot reach such customer or other adult resident of the premises by telephone by the specified time, a field representative will be sent to the residence to attempt to contact the Medically Essential Service Customer, no later than 4:00 p.m. of the day prior to scheduled disconnection. If contact is not made, however, the Company may leave written notification at the residence advising the Medically Essential Service Customer of the scheduled disconnect date; thereafter, the Company may disconnect service on the specified date. The Company will grant special consideration to a Medically Essential Service Customer in the application of Rule 25-6.097(3) of the Florida Administrative Code.

In the event that a customer is certified as a Medically Essential Service Customer, the customer shall remain solely responsible for any backup equipment and/or power supply and a planned course of action in the event of a power outage. The Company does not assume, and expressly disclaims, any obligation or duty; to monitor the health or condition of the person requiring medically essential service; to insure continuous service; to call, contact, or otherwise advise of service interruptions; or, except as expressly provided by this section, to take any other action (or refrain from any action) that differs from the normal operations of the Company.

10.04 Liability for Discontinuance:

Whenever the Company shall have the right to discontinue service to a customer, such right may be exercised without any liability for loss, damage, or injury resulting directly or indirectly from lack of electric service; and the Company shall be under no obligation or duty to ascertain whether such discontinuance would be likely to result in any such loss, damage, or injury.

10.05 Reconnection:

Service may be reconnected after those conditions which caused service to be discontinued have been corrected. A service charge may be applicable as provided for under Rate Schedule SC-1.

10.06 Customer's Deposit:

Where valid conditions exist, service may be discontinued whether or not the amount of the Customer's deposit is sufficient to cover the Customer's bill; and, where said deposit has been applied toward the settlement of such bill, service will not be reconnected until a satisfactory deposit is restored.



PART XI

UNDERGROUND RESIDENTIAL DISTRIBUTION POLICY

11.01 Definitions:

The following words and terms used under this policy shall have the meaning indicated:

- (1) Applicant: Any person, partnership, association, corporation, or governmental agency controlling or responsible for the development of a new subdivision or dwelling unit and applying for the construction of underground electric facilities.
- (2) Building: Any structure, within subdivision, designed for residential occupancy and containing less than five (5) individual dwelling units.
- (3) Commission: Florida Public Service Commission.
- (4) Company: Progress Energy Florida, Inc.
- (5) Direct Burial: A type of construction involving the placing of conductors in the ground without the benefit of conduit or ducts. Other facilities, such as transformers, may be above ground.
- (6) Distribution System: Electric service facilities consisting of primary and secondary conductors, service laterals, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.
- (7) Feeder Main: A three-phase primary installation which serves as a source for primary laterals and loops through suitable overcurrent devices.
- (8) Mobile Home (Trailer): A non-self propelled vehicle or conveyance, permanently equipped to travel upon the public highways, that is used either temporarily or permanently as a residence or living quarters.
- (9) Multiple-Occupancy Building: A structure erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
- (10) Point of Delivery: The point where the Company's wires or apparatus are connected to those of the Customer.
- (11) Primary Lateral: That part of the electric distribution system whose function is to conduct electricity at the primary level from the feeder main to the transformers serving the secondary street mains. It usually consists of a single-phase conductor or insulated cable, together with necessary accessory equipment for supporting, terminating and disconnecting from the primary mains by a fusible element.
- (12) Service Lateral: The underground service conductors between the street or rear property main, including any risers at a pole or other structure or from transformers, and the first point of connection to the service entrance conductors in a terminal or meter box on the exterior building wall.
- (13) Subdivision: The tract of land which is divided into five (5) or more building lots or upon which five (5) or more separate dwelling units are to be located, or the land on which is to be constructed new multiple-occupancy buildings.
- (14) Townhouse: A one(1)-family dwelling unit of a group of three (3) or more such units separated only by firewalls. Each townhouse unit shall be constructed upon a separate lot and serviced with separate utilities and shall otherwise be independent of one another.

ISSUED BY: Mark A. Myers, Vice President, Finance

EFFECTIVE: May 3, 2004



11.02 GENERAL:

(1) Application:

Underground electric distribution facilities are offered in lieu of overhead facilities in accordance with these Rules and Regulations for:

- a) Residential Subdivision and Developments (Part 11.03)
- b) New Service Laterals from Overhead Systems (Part 11.04)
- c) Replacement of Existing Overhead Service (Part 11.05)
- d) Multiple-Occupancy Residential Buildings (Part 11.06)

(2) Early Notification and Coordination:

In order for the Company to provide service when required, it is necessary that the Applicant notify the Company during the early stages of planning major projects. Close coordination is necessary throughout the planning and construction stages by the Company, the architect, the builder, the subcontractors, and the consulting engineer to avoid delays and additional expense. Particular attention must be given to the scheduling of the construction of paved areas and the various sub-grade installations of the several utilities.

(3) Changes to Plans:

The Applicant shall pay for any additional costs incurred by the Company due to changes made by the Applicant in the subdivision or development layout or grade as originally agreed upon between the Applicant and Company.

(4) Underground Installation Not Covered:

Where the Applicant requests underground electric facilities for residential subdivisions not falling within the dwelling units per acre density limitation as specified in Part 11.03(2)(a) or for residential developments of less than five (5) building lots and where overhead facilities would otherwise be provided, the Applicant shall pay the Company the estimated differential cost between the underground facilities and the suitable overhead facilities as determined by using the Company's current standard estimating data.

(5) Type of System Provided:

The costs quoted in these Rules are for underground residential distribution facilities of standard Company design with direct-buried cable and above-grade appurtenances. Unless otherwise stated, service provided will be 120/240-volt single phase. If other types of facilities are requested by the Applicant or required by governmental authority, the Applicant will pay the additional costs, if any.

(6) Ownership:

The Company will install, own, and maintain the electric distribution facilities up to the designated point of delivery except as otherwise noted. Any payment made by the Applicant, under the provisions of these Rules will not convey to the Applicant any rights of ownership.

(7) Rights of Way and Easements:

(a) General Requirements:

The Company shall construct, own, operate, and maintain distribution lines within the Applicant's subdivision only along easements, public streets, roads and highways which the Company has the legal right to occupy, and on public lands and private property across which rights of way and easements satisfactory to the Company may be obtained without cost or condemnation to the Company.

(b) Scheduling, Clearing, and Grading:

Rights of way and easements suitable to the Company must be furnished by the Applicant in a reasonable time to meet service requirements and must be cleared of trees, tree stumps, paving and other obstructions, staked to show property lines and final grade, and must be graded to within six (6) inches of final grade by the Applicant before the Company will commence construction, all at no charge to the Company. Such clearing and grading must be maintained by the Applicant during construction by the Company. Grade stakes must be provided at transformer locations.

(7) **Rights of Way and Easements (Continued):**

- (c) **Public Rights of Way:** Where underground distribution facilities are located in dedicated road or street right-of-way, no easement is required.
- (d) **Recorded Public Easements:** Where underground distribution facilities are located on private property, wholly within an area covered by a recorded subdivision utility easement, namely a reservation, and recorded plat of an easement for public utility purposes, no other easement is required.
- (e) **Service Laterals:** Where underground service conductors are located on private property and portions not covered by recorded subdivision utility easement are wholly within the private property they service no easement is required.
- (f) **Other Locations:** Where underground distribution facilities are located on private property other than as described in Part 11.02(7)(a) or 11.02(7)(e), easements are required and shall be prepared as outlined in instructions prepared by the Real Estate Department.
- (g) **Blanket Easements:** Where underground primary and secondary distribution facilities for service to a mobile home park or a multiple occupancy project are located on a tract of land having one ownership and the easement area cannot be described without a detailed survey, a blanket easement covering the entire premises may be utilized at the discretion of the Division Engineer.

(8) **Damage to Company's Equipment:**

The Applicant shall be responsible to ensure that the Company's distribution system, once installed, is not damaged, destroyed, or otherwise disturbed during the construction of the project. This responsibility shall extend not only to those in his employ, but also to his subcontractors, and he shall be responsible for the full cost of repairing such damage.

(9) **Charges:**

The Company shall not be obligated to install any facilities within a subdivision until satisfactory arrangements for the payment of applicable charges, if any, have been completed.

11.03 UNDERGROUND DISTRIBUTION FACILITIES FOR RESIDENTIAL SUBDIVISIONS AND DEVELOPMENTS.

(1) **Availability:**

When requested by the Applicant, the Company will provide underground electric distribution facilities in accordance with its standard practices in:

- (a) recognized residential subdivisions of five or more building lots;
- (b) tracts of land upon which five or more separate dwelling units are to be located;
- (c) tracts of land upon which new multiple-occupancy buildings are to be constructed.

For building containing five or more dwelling units, see Part 11.06 of these Rules.



(2) Contribution by Applicant:

(a) Schedule of Charges:

Company standard design underground residential distribution 120/240 volt single-phase service (see also Part 11.03(7)):

To subdivisions with a density of 1.0 or more but less than six (6) dwelling units per acre\$524.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre\$465.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre taking service at ganged meter pedestals.....\$245.00 per dwelling unit

To multi-occupancy buildings See Part 11.06(2)

(b) The above costs are based upon arrangements that will permit serving the local underground distribution system within the subdivision from overhead feeder mains. If feeder mains within the subdivision are deemed necessary, by the Company to provide and/or maintain adequate service and are required by the Applicant or a governmental agency to be installed underground, the Applicant shall pay the Company the average differential cost between such underground feeder mains within the subdivision and equivalent overhead feeder mains as follows:

Three-phase primary main or feeder charge per trench-foot within subdivision:

(U.G. - Underground, O.H. - Overhead)

#1/0 AWG U.G. vs. #1/0 AWG O.H.....\$5.61 per foot

500 MCM U.G. vs. 336 MCM O.H.....\$10.15 per foot

1000 MCM U.G. vs. 795 MCM O.H.....\$14.40 per foot

The above costs are based on underground feeder construction using the direct burial method. If conduit is required, the following additional charge(s) will apply:

2 inch conduit	\$1.55 per foot
4 inch conduit	\$3.21 per foot
6 inch conduit	\$5.01 per foot
Cable pulling - single phase	\$1.83 per foot
Cable pulling - 3 phase small wire	\$1.98 per foot
Cable pulling - 3 phase feeder	\$2.56 per foot

The above costs do not require the use of pad-mounted switchgear(s), terminal pole(s), pull boxes or feeder splices. If such facilities are required, a differential cost for same will be determined by the Company on an individual basis and added to charges determined above.

(c) Credits (not to exceed the "average differential costs" stated above) will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling for the use of the Company's facilities in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are:

Primary and/or Secondary Systems,
for each Foot of Trench\$2.35

Service Laterals,
for each Foot of Trench\$2.35



(3) Point of Delivery:

The point of delivery shall be determined by the Company and will be on the front half of the side of the building that is nearest the point at which the underground secondary electric supply is available to the property. The Company will not install a service on the opposite side of the building where the underground secondary electric supply is available to the property. The point of delivery will only be allowed on the rear of the building by special exception. The Applicant shall pay the estimated full cost of service lateral length required in excess of that which would have been needed to reach the Company's designated point of service.

(4) Location of Meter and Socket:

The Applicant shall install a meter socket at the point designated by the Company in accordance with the Company's specifications. Every effort shall be made to locate the meter socket in unobstructed areas in order that the meter can be read without going through fences, etc.

(5) Development of Subdivisions:

The above charges are based on reasonably full use of the land being developed. Where the Company is required to construct underground electric facilities through a section or sections of the subdivision or development where service will not be required for at least two (2) years, the Company may require a deposit from the Applicant before construction is commenced. This deposit, to guarantee performance, will be based on the estimated total cost of such facilities rather than the differential cost. The amount of the deposit, without interest, in excess of any charges for underground service will be returned to the Applicant on a prorata basis at quarterly intervals on the basis of installations to new customers. Any portion of such deposit remaining unrefunded, after five (5) years from the date the Company is first ready to render service from the extension, will be retained by the company.

(6) Relocation or Removal of Existing Facilities:

If the Company is required to relocate or remove existing overhead and/or underground distribution facilities in the implementation of these Rules, all costs thereof shall be borne exclusively by the Applicant. These costs shall include costs of relocation or removal, the in-place value (less salvage) of the facilities so removed, and any additional costs due to existing landscaping, pavement or unusual conditions.

(7) Other Provisions:

If soil compaction is required by the Applicant at locations where Company trenching is done, an additional charge may be added to the charges set forth in this tariff. The charge will be estimated based on the Applicant's compaction specifications.

11.04 UNDERGROUND SERVICE LATERALS FROM OVERHEAD ELECTRIC DISTRIBUTION SYSTEMS.

(1) New Underground Service Laterals:

When requested by the Applicant, the Company will install underground service laterals from overhead systems to newly constructed residential buildings containing less than five (5) separate dwelling units.

(2) Contribution by Applicant:

(a) The Applicant shall pay the Company the following average differential cost between an overhead service and an underground service lateral:

For Service Lateral up to 80 feet.....	\$ 448.00
For each foot over 80 feet up to 300 feet.....	\$ 1.05 per foot

Service laterals in excess of 300 feet shall be based on a specific cost estimate.

(b) Credits will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling in accordance with the Company specifications and for the use of the Company facilities, in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are as follows:

For each Foot of Trench.....	\$ 2.35
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The provisions of Paragraphs 11.03(3) and 11.03(4) are also applicable.



11.05 UNDERGROUND SERVICE LATERALS REPLACING EXISTING RESIDENTIAL OVERHEAD SERVICES:

Applicability:

When requested by the Applicant, the Company will install underground service laterals from existing overhead lines as replacements for existing overhead services to existing residential buildings containing less than five (5) separate dwelling units.

Rearrangement of Service Entrance:

The Applicant shall be responsible for any necessary rearranging of his existing electric service entrance facilities to accommodate the proposed underground service lateral in accordance with the Company's specifications.

Trenching:

The Applicant shall also provide, at no cost to the Company, a suitable trench and perform the backfilling and any landscaping, pavement, or other suitable repairs. If the Applicant requests the Company to supply the trench or remove any additional equipment other than the Service Lateral, the charge to the Applicant for this work shall be based on a specific cost estimate.

Contribution by Applicant:

The charge excluding trenching costs shall be as follows:

For Service Lateral \$ 321.00 per service

11.06 UNDERGROUND DISTRIBUTION FACILITIES TO MULTIPLE-OCCUPANCY RESIDENTIAL BUILDINGS:

(1) Availability:

Underground electric distribution facilities may be installed within the tract of land upon which multiple-occupancy residential buildings containing five (5) or more separate dwelling units will be constructed.

(2) Contribution by Applicant:

There will be no contribution from the Applicant so long as the Company is free to construct the extension in the most economical manner, and reasonably full use is made of the tract of land upon which the multiple-occupancy buildings will be constructed. Other conditions will require a contribution from the Applicant.

(3) Responsibility of Applicant:

(a) Furnish details and specifications of the proposed building or complex of buildings. The Company will use these in the design of the electric distribution facilities required to render service.

(b) Where the Company determines that transformers are to be located inside the building, the Applicant shall provide:

- i. The vault or vaults necessary for the transformers and the associated equipment, including the ventilation equipment.
- ii. The necessary raceways or conduit for the Company's supply cables from the vault or vaults to a suitable point five (5) feet outside the building in accordance with the Company's plans and specifications.
- iii. Conduits underneath all buildings when required for the Company's supply cables. Such conduits shall extend five (5) feet beyond the edge of the buildings for joining to the Company's facilities.
- iv. The service entrance conductors and raceways from the Applicant's service equipment to the designated point of delivery within the vault.



(3) Responsibility of Applicant (Continued):

(c) Where the Company determines that transformers are to be located outside the building, the Applicant shall provide:

- i. The transformer enclosure or space for pad-mounted equipment, if required.
- ii. The service entrance conductors and raceway from the Applicant's service equipment to the point of delivery designated by the Company at or near the building.

(4) Responsibility of the Company:

(a) The Company will:

- i. Provide the Applicant with the Company's plans to supply the proposed building or complex of buildings, and specifications for the facilities to be provided by the Applicant.
- ii. Furnish and install the primary or secondary conductors from existing or proposed facilities adjoining the property to the point of delivery.
- iii. Furnish and install the necessary transformers and associated equipment located either outside the building or in the vault(s) within the building.
- iv. Be solely responsible for the installation, operation, and maintenance of all of its facilities.

(5) Service Voltage:

The Company will supply service at one of the several secondary voltages available as mutually agreed upon between the Applicant and the Company.

PART XII

CHARGES FOR CONVERSION OF EXISTING OVERHEAD TO UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES

12.01 DEFINITIONS:

The following words and terms used under this Part shall have the meaning indicated:

- (1) Applicant: The Applicant is the person or entity seeking the undergrounding of existing or newly planned electric distribution facilities by the Company. When a developer requests local government development approval, the local government shall not be deemed the Applicant for purposes of these rules.
- (2) Commission: Florida Public Service Commission.
- (3) Cost Estimate Fee: A fee charged an Applicant by the Company for the purpose of preparing a cost estimate of the amount required for the Company to construct or convert particular distribution facilities as underground.
- (4) Company: Progress Energy Florida, Inc.
- (5) Distribution Facilities: All electrical equipment of the Company required to deliver electricity to homes and businesses.
- (6) Facility Charge: That charge required to be paid by an Applicant for the Company to construct or convert particular distribution facilities as underground.
- (7) Overhead: Pertains to distribution facilities consisting of conductors, switches, transformers, etc. which are installed above ground on supporting poles.
- (8) Underground: Pertains to distribution facilities consisting of conductors, switches, transformers, etc. which are installed below ground or on the ground.

12.02 GENERAL:

(1) Application:

Underground electric distribution facilities are offered in lieu of overhead facilities in accordance with these rules.

(2) Applicant Request:

An Applicant shall submit a request in writing for the Company to develop a cost estimate to accomplish the undergrounding of particular electric facilities. The request shall be accompanied by an appropriate fee and shall specify the following information:

- (a) the area(s) being sought to be undergrounded
- (b) a list of all electric customers affected
- (c) an estimated time frame for undergrounding to be accomplished
- (d) details of any construction by the Applicant
- (e) any other pertinent information which the Applicant possesses that may aid the Company in preparing an appropriate cost estimate

12.03 INSTALLATIONS NOT COVERED:

The following types of electrical installations are not addressed in these rules:

- (A) Distribution lines, new or existing, in urban commercial area, urban residential area, rural residential area, or existing subdivisions will not be considered for undergrounding if sufficient permits or easements cannot be obtained. The request will not be considered unless all customers on both sides of the road or street who are served by the supply system to be undergrounded are included in the proposed conversion.
- (B) Distribution lines in new residential subdivisions. These installations are covered under "Rules of the Florida Public Service Commission", Chapter 25-6, Part V, "Rules for Residential Electric Underground Extensions", and the Company's "General Rules and Regulations Governing Electric Service", Part XI.
- (C) Individuals applying for undergrounding of service laterals from existing overhead lines. These applications will be covered by rules referenced in 12.03(b) above.
- (D) Electrical distribution circuits serving street or area lighting. Requests for undergrounding circuits of this category will be treated on an individual basis.

12.04 COST ESTIMATE FEES:**(1) Non-Binding Cost Estimate Fee:**

The Company will provide a non-binding cost estimate related to the request at no cost to the Applicant. Such estimate shall not have any guarantee as to its accuracy and shall not be binding upon the Company.

(2) Binding Cost Estimate Fee

The following schedule of fees shall apply to the Applicant for engineering design time to establish a binding cost estimate by the Company for the request. Such fee shall be recognized as a credit in the Facility Charge determination if the Applicant enters into a construction contract within 180 days from date of receipt of the binding cost estimate. At the discretion of the Company, the time from submittal of the cost estimate to entering a contract may be extended beyond 180 days. A major scope change by the Applicant may require a new fee amount.

SCHEDULE OF BINDING COST ESTIMATE FEES

<u>Facility Classification</u>	<u>Fee</u>
Urban Commercial	\$4,234 per mile
Urban Residential	\$3,476 per mile
Rural Residential	\$2,549 per mile
Low Density Subdivision	\$ 15 per lot
High Density Subdivision	\$ 13 per lot

ISSUED BY: Lori J. Cross, Manager, Utility Regulatory Planning
EFFECTIVE:

JUL 10 2007

12.05 CONSTRUCTION CONTRACT:

(1) GENERAL:

Upon acceptance by the Applicant of the binding cost estimate, the Applicant shall execute a contract with the Company to perform the construction of the underground distribution facilities. The contract shall specify the type and character of system to be provided; establish the Facility Charge to be paid by Applicant prior to commencement of construction; specify details of construction to be performed by Applicant, if any; and address any other pertinent terms and conditions including those described in Part (4) below.

(2) FACILITY CHARGE:

Charge = Remaining net book value of existing overhead facilities to be removed;

plus, removal cost of existing overhead facilities;

minus, salvage value of existing overhead facilities;

plus, estimated construction cost of underground facilities including underground service laterals to residential customers meters or point of delivery for general service customers;

minus, estimated construction cost of overhead facilities including overhead service drops to customers' meters;

minus, qualifying binding cost estimate fee.

(3) CONSTRUCTION BY APPLICANT:

If agreed upon by both the Applicant and the Company, the Applicant may construct or install portions of the underground system as long as such work meets the Company's engineering and construction standards. The Company will own and maintain the completed distribution facilities upon accepting the system as operational. The type of system provided will be determined by the Company's standards.

Any facilities provided by the Applicant will be inspected by Company Inspectors prior to acceptance. Any deficiencies discovered as a result of these inspections will be corrected by the Applicant at his sole expense, including the costs incurred by performing the inspections. Corrections must be made in a timely manner by the Applicant, otherwise the Company will undertake the correction and bill the Applicant for all costs of such correction. These costs shall be additional to the original binding estimate.

(4) OTHER TERMS AND CONDITIONS

(a) Easements:

Before the initiation of any project to provide underground electric distribution facilities pursuant to an Underground Facilities Conversions Agreement, the Applicant shall provide the Company, at no cost to the Company, all easements utilizing Company approved language and forms, including legal descriptions of such easements and all survey work associated with producing legal descriptions of such easements, specified as necessary by the Company to accommodate the requested underground facilities along with an opinion of title that the easements are valid. Failure to provide the easements in the manner set forth above within 180 days after the delivery of the binding cost estimate to the Applicant shall result in the expiration of the binding cost estimate, the return of any CIAC paid, and the termination of any Underground Facilities Conversions Agreement entered into between the Applicant and the Company.

(b) Scheduling, Clearing, and Grading:

Rights-of-way and easements suitable to the Company must be furnished by the Applicant in a reasonable time to meet service requirements and must be cleared of trees, tree stumps, paving and other obstruction; staked to show property lines and final grade; and graded to within six (6) inches of final grade by the Applicant before the Company commences construction; all at no cost to the Company. Such clearing and grading must be maintained by the Applicant during construction by the Company. Grade stakes must be provided at transformer, pullbox, and switch locations.

(c) Restoration:

All removal and restoration of buildings, roads, driveways, sidewalks, patios, fences, ditches, landscaping, sprinkler systems, other utilities etc., shall be the full responsibility of the Applicant and shall cause no cost to the Company. Removal of all construction debris not belonging to the Company shall be the responsibility of the Applicant.

(d) Other Joint Users on the Company Poles:

Prior to construction, the Applicant must make arrangements with any other joint users of the Company's poles to remove their facilities at no cost to the Company. The Applicant shall produce, if requested by the Company, executed agreements with all joint users guaranteeing this requirement. During construction, the Company will undertake coordination efforts directly with the joint users where required for removal of their facilities.

(e) Affected Electric Customers:

Prior to construction, the Applicant must make arrangements with all affected Company customers to prepare their premises and service entrance in a timely manner for underground service. All customers affected by the undergrounding request must agree to accept underground service. These customers' conversions will be at no cost to the Company. During construction, the Company will undertake coordination efforts directly with affected customers for their transfer to underground service.

(f) Damage to the Company's Underground Facilities:

The Applicant shall be responsible to ensure the Company's distribution facilities are not damaged, destroyed, or otherwise disturbed during construction. This responsibility shall extend not only to those in his employ, but also to his subcontractors, and he shall be responsible for the full cost of repairing such damage.

12.06 LOCAL GOVERNMENTAL UNDERGROUND COST RECOVERY**(1) Eligibility**

Underground cost recovery in accordance with the provisions of this Section 12.06 is available at the option of those municipal and county governments (local governments) located within the Company's retail service area who have entered into a contract with the Company pursuant to Section 12.05 of this Part XII for the conversion of existing overhead distribution facilities to underground facilities.

(2) Annual Recovery Amount

- (a) An eligible local government may receive an Annual Recovery Amount collected by the Company through a Governmental Undergrounding Fee added to the electric bills of the Company's customers located in an Underground Assessment Area within the boundaries of the local government. The local government's Annual Recovery Amount shall be calculated in accordance with the following formula:

$$\text{Annual Recovery Amount} = \frac{(FC + GC) \times I}{1 - \frac{1}{(1 + I)^n}}$$

Where:

FC = Facility Charge, as defined in Paragraph 12.05(2)(b) of this Part XII.

GC = Governmental Cost, which consists of the following costs incurred by the local government:

1. a surcharge based on the lesser of 10 percent of the Facility Charge or \$50,000, to reimburse the Company for a portion of its initial programming costs to implement the customer billing processes required by this Section 12.06;
2. reimbursement of the Company for its additional programming costs required to bill customers in the local government's specific Underground Assessment Area;
3. ancillary costs of the local government related to its undergrounding project, such as right-of-way acquisition, preparation and restoration costs, and financing costs; and
4. at the local government's option, (i) the total cost charged by electrical contractor(s) selected and hired by the local government to convert customer facilities (such as service entrances and meter bases) to receive underground service for all residential customers requiring such conversion, or (ii) a portion of the total cost charged by such electrical contractor(s) (based on a minimum average charge per customer determined by the local government), to convert customer facilities to receive underground service for all commercial/industrial customers requiring such conversion, or both (i) and (ii).

n = The Number of years over which the Facility Charge and Governmental Cost is to be recovered by the local government, which shall not exceed a maximum of 20 years.

i = The Interest rate on the bonds or other financial instruments utilized by the local government to finance the Facility Charge and Governmental Cost, adjusted for financing costs.

- (b) In no event shall the Annual Recovery Amount exceed the amount that would have been recoverable over the most recent 12-month period for which actual customer billing data is available, using the maximum Governmental Undergrounding Fee permissible under Paragraph (3)(a) or (b) of this Section 12.06

(3) Underground Assessment Area

The local government shall establish the geographic boundaries of an Underground Assessment Area based on a determination, in its discretion, that the electric customers located within these boundaries benefit sufficiently from the underground conversion project in question to warrant the payment of a Governmental Undergrounding Fee to recover the costs of the conversion project. The Underground Assessment Area so established may consist of all or any contiguous portion of the area within the local government's corporate limits, and may overlap all or portions of other Underground Assessment Areas previously established by the local government.

(4) Governmental Undergrounding Fee

- (a) The Company will bill a monthly Governmental Undergrounding Fee to electric customers located in the Underground Assessment Area established by the local government. The Governmental Undergrounding Fee shall be based on a uniform percentage of customers' total net charges for electric service calculated to produce the Annual Recovery Amount, net of regulatory assessment fees, if any. Except as provided in Paragraph 3(b) of this Section 12.05, the total Governmental Undergrounding Fee billed to a customer's account (irrespective of the number of Underground Assessment Areas in which the customer may be located) shall not exceed the lesser of (i) 15 percent of the customer's total net electric service charges, or (ii) a maximum monthly amount of \$30 for residential customers and \$50 for each 5,000 kilowatt-hour increment of consumption for commercial/industrial customers. The maximum monthly amount shall apply to each line of billing in the case of a customer receiving a single bill for multiple service points, and to each occupancy unit in the case of a master metered customer.
- (b) The application of a Governmental Undergrounding Fee based on a higher percentage or maximum monthly amount than specified in Paragraph 3(a) of this Section 12.05 shall require approval of the Florida Public Service Commission.
- (c) The Governmental Undergrounding Fee shall be recalculated for each 12-month period during its effectiveness following the initial annual period. The recalculation shall be based on the Company's most current projections for the upcoming period, and shall include a true-up adjustment based on the difference between projected and actual recovery for the prior 12-month period.

(5) Optional Utility Financing

At the option of the local government, the Company will provide financing for the Facility Charge and Governmental Cost of the undergrounding project, subject to any limitation on the funds made available for such purpose at the Company's discretion. Upon request, the Company will advise the local government at the time the binding cost estimate is presented pursuant to Paragraph 12.04(2) of this Part XII whether sufficient funds are available at that time to finance the cost of the undergrounding project. The interest rate applicable to such optional financing will be determined by the Company commensurate with normal risk considerations such as the credit worthiness of the local government, the total cost subject to financing, the expected duration of the undergrounding project, and any other identifiable risks associated with financing the project.

(6) Customer Notification

At least 30 days prior to the execution of an Underground Capital Cost Recovery Contract pursuant to Subsection (7) of this Section 12.05, the local government shall mail a notice to each electric customer located within the proposed Underground Assessment Area stating its intention to recover the cost of the underground conversion project in question through a Governmental Undergrounding Fee on the customer's electric bill. The notice shall include, at a minimum, (i) a description of the underground conversion project, (ii) an estimate of the Governmental Undergrounding Fee (as a percentage of total net electric charges) and the maximum monthly amount, (iii) the month in which billing of the Fee is expected to commence, (iv) the number of years over which the Fee is to be imposed, and (v) a postage-prepaid form on which the customer may submit comments to the local government.

(7) Underground Cost Recovery Contract

The local government shall enter into a contract with the Company, the form of which has been approved by the Florida Public Service Commission or its staff, establishing the specific terms and conditions for underground capital cost recovery consistent with the provisions of this Section 12.06.

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION

MEDITERRANEAN MANORS ASSOCIATIONS, INC.,
a Florida not-for-profit corporation,

Plaintiff,

vs.

PROGRESS ENERGY FLORIDA, INC.,
a Florida corporation,

Defendant.

CASE NO.: 10-16309-CI-15

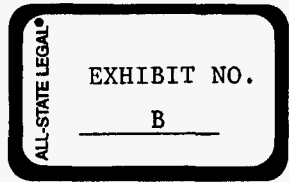


**DEFENDANT PROGRESS ENERGY FLORIDA, INC.'S
MOTION TO DISMISS OR STAY AND MOTION TO STRIKE**

Defendant, Progress Energy Florida, Inc. ("PEF"), pursuant to Rule 1.140, *Fla. R. Civ. P.*, moves to dismiss or stay Plaintiff Mediterranean Manors Association, Inc.'s Amended Complaint because the Florida Public Service Commission ("Commission") has exclusive or primary jurisdiction to determine the service issue raised by the Amended Complaint. Alternatively, PEF moves to dismiss because the Tariff attached to the original Complaint contradicts the allegations of the Amended Complaint that PEF owed Plaintiff a duty to repair service under the Tariff. In addition, pursuant to Rule 1.140(f), *Fla. R. Civ. P.*, PEF moves to strike Plaintiff's attorney's fees request because no basis for an award is pled.

AMENDED COMPLAINT ALLEGATIONS

Plaintiff brings claims for declaratory judgment and negligence alleging that PEF should have provided repair service to Plaintiff in 2009 when underground electric cable connecting a PEF transformer to its buildings failed at the Mediterranean Manors Condominiums Buildings 5



and 6. PEF's obligations to install underground services are set forth in its Tariff and service policies and procedures approved by the Commission. Plaintiff asks this Court to interpret the Tariff (attached as Exhibit A to the original Complaint) and declare that section 1.02 of that Tariff applies to Plaintiff and requires PEF to maintain, repair, or replace Plaintiff's underground electrical cables. (*See* Am. Compl. ¶¶ 21-28, 35). Consequently, Plaintiff's Amended Complaint is wholly dependent upon an interpretation of PEF's service obligations as a regulated public utility under the Commission-approved Tariff.

ARGUMENT

I. The Amended Complaint should be dismissed or stayed because the Commission has exclusive or primary jurisdiction over claims regarding electric service.

PEF moves to dismiss Plaintiff's Amended Complaint because the Commission has exclusive jurisdiction over PEF's service to customers like Plaintiff, approved the Tariff attached to the original Complaint, and, under the principles of primary jurisdiction, is in the best position to interpret and declare what sections of the Commission-approved Tariff apply in customer service disputes like this one.

The Florida Legislature granted the Commission exclusive jurisdiction "to regulate and supervise each public utility with respect to its rates and service." § 366.04(1), Fla. Stat. (emphasis added). The Commission was also granted broad authority and discretion to adopt and implement rules under § 366.05(1), Fla. Stat. Under Rule 25-6.033(4), F.A.C., PEF is required to file a tariff that includes provisions governing its construction and service obligations to customers, and that tariff must be approved by the Commission. *See* Rule 25-6.033(2)(a), F.A.C. The Commission rules also contemplate that disputes regarding tariffs and application of rules and regulations will be referred to it first and that the Commission will resolve the dispute. *See* Rule 25-6.004, F.A.C.) ("[i]n the event of any dispute involving the interpretation of any of

these rules and regulations, any party in interest may refer the matter to the Commission for adjudication”). A determination of PEF’s service obligations to Plaintiff under the Tariff should be vested with the Commission under the powers granted to it by the Legislature to regulate and supervise service and tariffs. *See* § 366.04(1), Fla. Stat. & Rule 25-6.004, F.A.C.

At a minimum, under the doctrine of primary jurisdiction, the Court should defer this case to the Commission based on its specialized expertise in these matters. In *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1036 -1037 (Fla. 2001), the Florida Supreme Court described why a court should defer to an agency under the doctrine of primary jurisdiction: (1) the court could have the benefit of an agency’s experience and expertise in matters with which the court is not as familiar, (2) it protects the integrity of the regulatory scheme administered by the agency, and (3) it promotes consistency and uniformity in areas of public policy. *Id.*; *see also Hill Top Developers v. Holiday Pines Service Corp.*, 478 So. 2d 368, 370 (Fla. 2d DCA 1985) (“the judiciary, although possessing subject matter jurisdiction to pass upon the asserted claim, stays its hand and defers to the administrative agency in order to maintain uniformity at that level or to bring specialized expertise to bear upon the disputed issues”).

The reasons expressed in *Flo-Sun* apply in this case. First, the Commission has singular expertise because the Commission has already heard and decided similar cases. In *Streamline Hotel v. Florida Power & Light Co.*, 2007 WL 57170 (Fla. P.S.C Jan. 8, 2007), a customer sought Commission review of his issue regarding ownership (and repair and replacement) of electrical wiring which had failed and caused the closure of the Streamline Hotel. The utility, Florida Power & Light, had previously refused to repair the wire saying that it was customer-owned. The Commission noted that “we have jurisdiction pursuant to Section 366.03, 366.04 and 366.05, Florida Statutes, with respect to an electric company’s rates and service. Included in our

authority, is the jurisdiction to interpret our rules and the utility's tariffs." Likewise, the Commission has a history of making decisions regulating tariffs. In Commission Order No. PSC-09-0265-TRF-EI (issued April 27, 2009), the Commission explicitly reviewed and approved a change in PEF's tariff regarding its duty to maintain, repair, or replace electrical wiring for non-residential customers and specifically defined the point of delivery for such customers. *Id.*

Moreover, as discussed in *Flo-Sun*, the central issues in this case implicate application of technical and industry terms of art such as "residential", "multi-occupancy", and "point of delivery." The Commission is in the best position to determine what provisions of the Tariff are applicable, what facts are important, and consequently what obligation PEF as a public utility has to Plaintiff. Significantly, referral of this case to the Commission will also promote consistency and uniformity in application of Commission rules and regulations.

The fact that Plaintiff seeks money damages in the form of reimbursement for Plaintiff's alleged repair costs does not mean that this Court should not defer to the Commission to determine PEF's service obligations to Plaintiff under the Commission's exclusive jurisdiction to regulate service under the Tariff and Commission rules. Plaintiff's damage claims under the allegations of the Amended Complaint turn on whether or not PEF owed Plaintiff a duty to provide repair service under the Tariff. *Florida Power & Light Co. v. Glazer*, 671 So. 2d 211 (Fla. 3d DCA 1996) and *Southern Bell Telephone and Telegraph Co. v. Mobile Am. Corp.*, 291 So. 2d 199 (Fla. 1974) are, therefore, inapposite. In both *Glazer* and *Southern Bell*, the claims for monetary damages rested on principles of common law negligence that courts apply all the time. These cases did not involve claims where the duty turned on an interpretation of service obligations within the purview of the Commission under a Commission-approved Tariff.

Plaintiff's case, however, turns on interpretation of Commission rules and the Commission-approved Tariff. These issues are more appropriately within the expertise and experience of the Commission.

For these reasons, this Amended Complaint should be dismissed or stayed pending a decision by the Commission regarding the applicability of the Tariff and PEF's service obligations under the Tariff.

II. Alternatively, the Court should dismiss the Amended Complaint for failure to state a cause of action.

Alternatively, should the Court retain jurisdiction to interpret the Commission-approved Tariff, Plaintiff's allegations that PEF owes Plaintiff a duty to repair the failed cable in the Amended Complaint are inconsistent with the Tariff. The plain language of the Tariff section Plaintiff relies on to allege PEF owes it a duty to repair its underground service clearly shows this Tariff section has nothing to do with underground service. Section 1.02 of the Tariff describes "Service Classifications" for "rate application purposes" only. Plaintiff does not allege that PEF charged Plaintiff inapplicable or inappropriate "rates" for the service Plaintiff receives from PEF. Plaintiff alleges Plaintiff repaired a failed underground service cable that PEF should have repaired and wants to be reimbursed the repair costs Plaintiff allegedly incurred. Section 1.02 has nothing to do with the qualifying factors for PEF's residential versus non-residential underground service obligations. (*See* Compl. Exhibit A, § 1.02). Rather, based on the allegations of the Amended Complaint that Plaintiff is a condominium association with multiple occupied residential buildings, Section 11.06 of the Tariff delineates the service obligations for a Multi-Occupancy Building. (*Id.* at § 11.06). Since the Tariff contradicts Plaintiff's allegations, the Amended Complaint should be dismissed. *See Fladell v. Palm Beach County Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000) ("If an exhibit facially negates the cause of action

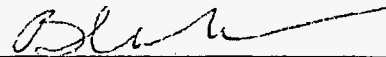
asserted, the document attached as an exhibit controls and must be considered in determining a motion to dismiss"). For this reason, the Amended Complaint should be dismissed.

III. Plaintiff has not pled a basis for its attorney's fee request and therefore such allegations should be stricken from the Amended Complaint.

Plaintiff failed to plead a basis for its attorney's fee request contained in paragraphs 19, 31, and Wherefore Clause, B. It is well settled under Florida law that "attorneys' fees can derive only from either a statutory basis or an agreement between the parties." *Florida Hurricane Protection and Awning, Inc. v. Pastina*, 43 So. 3d 893, 895 (Fla. 4th DCA 2010). No such basis is pled in the Amended Complaint; in fact no basis at all is pled. Accordingly, PEF requests that the Court strike the allegations regarding attorney's fees in paragraphs 19, 31, and Wherefore Clause, B pursuant to Rule 1.140(f).

WHEREFORE, PEF respectfully requests that the Court dismiss or stay the Amended Complaint based on the Commission's exclusive or primary jurisdiction and strike the attorney's fees request pursuant to Rule 1.140(f). Alternatively, PEF requests that the Court dismiss the Amended Complaint because the exhibit attached to the Amended Complaint conflicts with the allegations of the Amended Complaint.

Respectfully submitted:



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Attorneys for Progress Energy Florida, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2010, a true and correct copy of the foregoing was served via facsimile and U.S. mail on the following:

Joseph R. Cianfrone, Esquire
Daniel J. Greenberg, Esquire
JOSEPH R. CIANFRONE, P.A.
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Attorney

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION

MEDITERRANEAN MANORS ASSOCIATION, INC.,
a Florida not-for-profit corporation,

Plaintiff,

CASE NO.: 10-16309-CI-15

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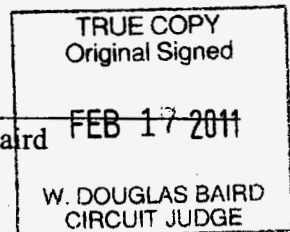
**ORDER GRANTING DEFENDANT PROGRESS ENERGY FLORIDA, INC.'S
MOTION TO STAY AND ABATEMENT OF THE PROCEEDING**

THIS CAUSE having come before the Court in Chambers on February 10, 2011 on Defendant Progress Energy Florida, Inc.'s Motion to Dismiss or Stay and Motion to Strike, and the Court having considered the motions, heard arguments of counsel, and otherwise being fully advised in the premises, it is ORDERED AND ADJUDGED as follows:

1. Defendant's Motion to Stay is hereby GRANTED and this case shall be ABATED.
2. Defendant's Motion to Dismiss and Motion to Strike are rendered moot.
3. The above-styled case shall be abated pending a determination by the Florida Public Service Commission as to what section of the Tariff between the parties is applicable to this matter and for a determination of Defendant's service obligations to Plaintiff under the Tariff.

DONE and ORDERED in Chambers in Clearwater, Pinellas County, Florida, this _____
day of February, 2011.

Honorable W. Douglas Baird
Circuit Court Judge



Conformed copies to:
Joseph R. Cianfrone, Esq.
Daniel J. Greenberg, Esq.
Blaise N. Huhta, Esq.

