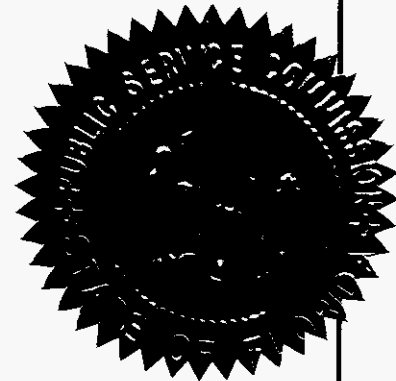


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080200-EI

In the Matter of:

PETITION TO MODIFY TARIFF SHEET NO.
4.010 REGARDING UNDERGROUND COMMERCIAL
AND INDUSTRIAL SERVICES BY PROGRESS
ENERGY FLORIDA, INC.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 12

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

DATE: Tuesday, April 7, 2009

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER - DATE
03563 APR 17 8
FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 JOHN BURNETT, ESQUIRE, representing Progress
3 Energy Florida, Inc.

4 CONNIE KUMMER, Commission staff.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

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

CHAIRMAN CARTER: Now, Commissioners and staff, we move to Item 12. We'll give staff an opportunity to get settled in.

MS. KUMMER: Commissioners, Connie Kummer with staff.

CHAIRMAN CARTER: Turn your mike on. Is your mike on?

MS. KUMMER: It is on. Maybe --

CHAIRMAN CARTER: Yeah. Bring it closer. Thank you.

MS. KUMMER: Okay. Item 12 concerns what is essentially a tariff cleanup item. It came to staff's attention that Progress Energy had modified its construction practice for commercial service drops in 1994 through a change to its construction handbook. In an abundance of caution, staff felt that this change should be codified in its tariff and asked that Progress modify its underground tariff to incorporate this practice.

In Issue 1, staff is recommending that the amended tariff which requires commercial customers to install and maintain their own underground service drops be approved.

Issue 2 addresses the two complaints which

1 gave rise to the proposed tariff modification. The
2 proposed change shifts the cost of replacing existing
3 service drops to the customer when those service drops
4 fail. This is an increased cost to the customer if
5 Progress had installed the original drop.

6 Progress has settled the one complaint that
7 came from an actual customer. The second complaint was
8 not from an affected customer and did not represent any
9 specific facts upon which to grant relief. Staff is
10 recommending that if any other customers come forward on
11 this matter, that the complaints be handled on a
12 case-by-case basis through the informal complaint
13 process.

14 CHAIRMAN CARTER: Thank you.

15 Commissioner Skop, you're recognized.

16 COMMISSIONER SKOP: Thank you, Mr. Chairman.

17 I just had a quick issue with respect to the
18 staff recommendation on Issue 2. I thought that the,
19 you know, staff recommendation here was somewhat
20 open-ended to the extent that on one hand they say
21 there's no basis for relief, but on the other hand they
22 leave this issue open. And I guess, you know, in my
23 view the revision to the tariff standardizes the point
24 of delivery and will result in cost savings for the
25 general body of ratepayers.

1 It's been about 15 years, as staff has pointed
2 out in the recommendation, since the handbook has been
3 changed. There hasn't been any recent activity per se
4 except for the two recent complaints. But, again, I'm
5 not comfortable in light of the constructive notice that
6 was provided by virtue of the changes to the handbook
7 spanning 15 years of leaving this open-ended.

8 And so what I would do is propose a
9 modification to the staff recommendation on Issue 2 to
10 be reflected in the final order, and that would read as
11 such. As a result of the prior modifications to the PEF
12 Requirements for Electric Service and Meter
13 Installations Handbook there is no basis to grant the
14 relief, there is no basis to grant the relief requested.
15 All current C/I customers, even those whose underground
16 service beyond the designated point of delivery was
17 installed and owned by the utility, will be responsible
18 for the full replacement cost of their underground
19 conduit and equipment when the conduit or equipment
20 fails or wears out. PEF will continue to maintain the
21 lines it previously installed until maintenance, in
22 PEF's sole discretion, is no longer feasible and
23 replacement is the only viable option. The reason for
24 this, again, is to close, I think, the open-ended
25 recommendation.

1 Again, standardizing -- and Boeing -- when I
2 worked at Boeing we learned this: Customization costs a
3 lot of money. Boeing standardized its designed. And I
4 think that's what Progress is attempting over the last
5 15 years to do here is that they're standardizing the
6 point of delivery and the interconnection point and
7 basically in good faith call it a contribution-in-
8 aid-of-construction and what have you. They're
9 maintaining the existing lines beyond that delivery
10 point until such time it's not economically feasible to
11 do so. And once replacement is necessary, it becomes
12 the C/I customer's responsibility, as was indicated in
13 the revision to the handbook many years ago. And that's
14 fair to the general body of ratepayers because the
15 general body of ratepayers in my mind should not have to
16 pay for individual nonstandard interconnections and
17 maintenance of that.

18 So to me, I think that the, the historical
19 changes or the prior modifications to the handbook
20 provided constructive notice to the customers, put them
21 on notice, PEF has shown good faith in maintaining the
22 lines, it's worked out, you know, situations as they
23 arise. But to me, I think that as long as PEF has made,
24 or Progress has made a commitment in good faith to
25 maintain the lines until it's not economically feasible

1 to do so, that's sufficient in itself and I find no
2 basis to grant relief. It's, again, trying to address
3 or tighten up the language in the staff recommendation
4 that I found problematic.

5 And for the younger crowd, at least to me, I
6 was listening to it on the way here, it's like that
7 Cranberries song, you have to let it linger. But it
8 might be lost on some of us here.

9 But, anyway, I just thought that the language
10 needed to be tightened up, and I would respectfully
11 request the Commission consider modifying the staff
12 recommendation as I've handed out to the Commissioners.

13 CHAIRMAN CARTER: Thank you. Commissioner,
14 does staff have a copy of this?

15 COMMISSIONER SKOP: They can have my copy.

16 CHAIRMAN CARTER: Why don't we do this, why
17 don't we just take a minute, let staff look this over.

18 COMMISSIONER ARGENZIANO: And I'd like to ask
19 questions too.

20 CHAIRMAN CARTER: Why don't we just take a
21 break, let staff look this over, and then we'll come
22 back in and then you can get your questions prepared and
23 we can do it from that.

24 COMMISSIONER ARGENZIANO: Great. I just want
25 to have a good understanding.

1 CHAIRMAN CARTER: Okay. All right. So we're
2 on recess for five PSC minutes.

3 (Recess taken.)

4 We are back on the record. And just before we
5 recognize staff, Commissioner Skop, you're recognized,
6 sir.

7 COMMISSIONER SKOP: Thank you, Mr. Chair.
8 Just for, just a point of information to staff to help
9 them evaluate the proposed modification language, I'd
10 note that the majority of the language comes directly
11 from Page 4 of the staff recommendation at the bottom of
12 the second paragraph of the staff analysis. It's pretty
13 much verbatim. And then also, too, getting to my point
14 I actually found that on Page 7 at the second to the
15 last paragraph staff noted that in 15 years since PEF
16 changed its policy the Commission has not received any
17 complaints. So thank you.

18 CHAIRMAN CARTER: Okay. Staff, you're
19 recognized.

20 MS. KUMMER: Staff has no problems with the
21 modifications. We've spoken with the company and they
22 have no problems either. We're comfortable with either
23 one.

24 CHAIRMAN CARTER: Okay. What does it do?

25 MS. KUMMER: What does it do?

1 CHAIRMAN CARTER: Yeah.

2 MS. KUMMER: In staff's original
3 recommendation we left the door open for affected
4 customers to file complaints because the second
5 complaint, although it didn't quite contain any
6 specifics, the consultant asserted that he knew of
7 people who were affected, and staff just wasn't really
8 comfortable closing that door completely. But I
9 completely understand Commissioner Skop's logic, and if
10 that's the Commission's desire, staff has no problem.

11 CHAIRMAN CARTER: Commissioner Argenziano.

12 COMMISSIONER ARGENZIANO: You know, it's
13 almost like saying we want white but we'll take black.
14 We'll take black, we take white. It's either you take a
15 position or you don't. And I understand you have five
16 Commissioners that you have to kind of please. I don't
17 know.

18 But what I need to know is if you close the
19 door, okay, and I understand what Commissioner Skop is
20 saying, but if, and I'm not an attorney but I've been
21 around attorneys long enough to know how they think and
22 to, I guess, be involved enough to understand the legal
23 matters of it to a certain degree. But if you have a
24 handbook that's changed, and I understand and I do
25 believe that the companies, most of the companies do it

1 that way, it's from this point to here the company is
2 responsible for, from this point to here the business is
3 responsible for. But if there was a screw-up, a mess-up
4 and the tariff did say that the company is going to be
5 responsible from here to here when really they're not
6 and the company then changes the handbook, if there are
7 affected people, how do you close the door on those
8 affected people? Wouldn't it be more logical to say,
9 okay, there haven't been any complaints and that's good,
10 but leave the door open in case there are legitimate
11 concerns that you can take individually? Isn't that
12 what your original, or your recommendation is really
13 saying?

14 MS. KUMMER: Yes.

15 COMMISSIONER ARGENZIANO: In case there is --
16 we could look at it case by case. You may say, hey, you
17 have no, no case and we don't agree with you. But
18 closing the door then also closes the door to a possible
19 legitimate complaint. And I understand where
20 Commissioner Skop wants to go and I, and I sympathize
21 with that. But I also look at it the other way and say,
22 well, if there is something legitimate out there, then
23 maybe we shouldn't close the door. And since there's no
24 complaints, maybe there hasn't -- you know, there is
25 nobody out there and maybe it won't come to fruition.

1 So what I want from you is to figure out -- I
2 guess since you came up with this recommendation, tell
3 me why you came up with that recommendation. And with
4 all due respect to Commissioner Skop, I understand where
5 he's going and I'm not trying to be controversial just
6 to be controversial, I've got those things in my mind,
7 which I hope he understands, but I want to know why you
8 came up with your original recommendation.

9 MS. KUMMER: Commissioner, I've handled a lot
10 of consumer complaints in the construction CIAC area and
11 you have enunciated my concerns. I don't know that
12 there's any out there. We've only had one actual
13 customer come forward in 15 years. I'm not sure anybody
14 is going to. But we did have the second complaint
15 where, granted, it was a consultant who alleges that
16 there are other people affected, and I just wasn't
17 comfortable as staff recommending that we close that
18 door completely at this point. I think the chances are
19 probably slim that there's going to be anybody else come
20 forward. But the company is comfortable with staff's
21 original language. And, as I said, you've restated my,
22 my original reasons for doing it as I just wasn't
23 comfortable closing the door since that other complaint
24 was out there alleging that there were possibly other
25 consumers.

1 COMMISSIONER ARGENZIANO: And, again, with
2 Commissioner Skop's modification, I understand the
3 reason for it because traditionally it is the company
4 responsible from this point to this point and the
5 business responsible from this point to this point and I
6 understand that. I just don't know legally if you have
7 a legitimate person out there that was affected somehow
8 because there was an error, and I'm not sure you close
9 the door on an error, and if the company -- and correct
10 me if I'm wrong, and I want to be corrected because this
11 is the way I'm picturing it, and if it's different, I
12 need to know, but the company was okay, that's what I
13 understood, with this. Because I think they probably
14 feel the same thing. I mean, you had some consultant
15 out there saying that there may be somebody affected but
16 nobody has said anything. Nobody has come to, to the
17 plate, so to speak. But is there something I'm missing?

18 MS. KUMMER: I don't, I don't think you're
19 missing anything. I just wouldn't characterize it as an
20 error because in ancient history before 1994 the
21 company's point of demarcation moved and that was just
22 their practice. In 1994 they decided that we're going
23 to stop here.

24 COMMISSIONER ARGENZIANO: Okay. Okay. So it
25 was just a change, a definite change.

1 MS. KUMMER: Right. It was just, it was just
2 a change.

3 COMMISSIONER ARGENZIANO: Well, then that
4 makes it even more so an issue because if it was a
5 change and not something that was always practiced that
6 way and just an error in a tariff, then there could be
7 somebody legitimately affected.

8 MS. KUMMER: That was my thinking.

9 COMMISSIONER ARGENZIANO: Okay. Maybe
10 Commissioner Skop could --

11 CHAIRMAN CARTER: Commissioner Skop, then
12 Commissioner McMurrian.

13 COMMISSIONER SKOP: Thank you, Mr. Chairman.
14 I just want to point out, and I don't think staff is
15 making a really, making this very definitive, which is
16 making this somewhat complicated, but to Commissioner
17 Argenziano's point, which I think is a good one, I don't
18 think that there was ever an error in the tariff. I
19 think the tariff was always fine.

20 And I would point to Page 6 of the staff
21 recommendation in the first paragraph of the staff
22 analysis where it clearly states, quote, the handbook is
23 incorporated by reference in the utility's tariffs, but
24 --

25 COMMISSIONER ARGENZIANO: Where are -- sorry.

1 Where are you on Page 6?

2 COMMISSIONER SKOP: Okay. The paragraph --
3 Page 6, first paragraph of the staff analysis in the
4 middle part of the paragraph. It said, "The staff
5 handbook is incorporated by reference in the utility's
6 tariff." Progress changed the handbook back beginning
7 in 1994. That does not make the tariff in error, it
8 does not change the tariff, it does not make the tariff
9 defective. The tariff was perfectly fine. Staff has
10 mentioned that they would, you know, it might have been
11 preferable for the utility to have formally amended its
12 tariff, but they didn't take a position. And,
13 furthermore, they say there's no basis for claim. So to
14 me, I guess the point I'm trying to raise is that
15 there's no basis for claim, yet staff is willing to
16 leave this open.

17 And it seems to me that changing the handbook
18 provided constructive notice as far back as 1994.
19 Progress is maintaining the lines in good faith for
20 those affected customers until those lines wear out.
21 That may be 30 years from now before somebody has to
22 replace a line. But go ahead.

23 COMMISSIONER ARGENZIANO: But why, why -- to
24 the point, why was the handbook changed if nothing was
25 wrong with the tariff?

1 COMMISSIONER SKOP: To standardize the
2 interconnection point. It costs the general body of
3 ratepayers significantly more money when you have to
4 customize the installation; whereas, if you standardize
5 the delivery point of interconnection and -- it's kind
6 of like a transformer. If you have a transformer and
7 the utility --

8 COMMISSIONER ARGENZIANO: Let me do this.
9 Okay? Let me do this. For purposes of simplicity --

10 COMMISSIONER SKOP: Okay.

11 COMMISSIONER ARGENZIANO: -- if you have a
12 transformer here and you know that from this point to
13 the company, the electric company this is their
14 responsibility and anything beyond that to the business
15 is your responsibility, now what I'm understanding is at
16 one point there was a change. It used to be that maybe
17 the electric company took care of everything; is that
18 correct?

19 MS. KUMMER: Yes.

20 COMMISSIONER ARGENZIANO: They decided to
21 change that. Now if I'm a customer and now that's
22 changed, and just because you changed your handbook but
23 the tariff indicates something else, are you telling me
24 the tariff does not --

25 COMMISSIONER SKOP: The tariff did not

1 require, the tariff was not required to be modified.
2 The, the handbook that was changed was incorporated by
3 reference by the tariff. So the tariff has a reference
4 and that reference is the handbook.

5 COMMISSIONER ARGENZIANO: How do I as a
6 customer know that all of the sudden this has been
7 changed, that now I am responsible from this point to my
8 business?

9 MS. KUMMER: They would know at the point that
10 their service failed and the utility came out.

11 COMMISSIONER ARGENZIANO: So they would have
12 no idea then -- would they necessarily know that the
13 handbook had been changed? How do you know as a
14 customer what your responsibility is if in a tariff you
15 are understanding that the company takes care of the
16 whole line? I mean, if I knew from the beginning that
17 the company took care from this point to the
18 transformer, then I know from this, the transformer to
19 my business is my responsibility.

20 My concern is if there's somebody who believes
21 that they still were under the old way, and I don't
22 know, I don't know the particulars, my concern in
23 closing the door is that they may have a legitimate
24 gripe or something and they may not.

25 COMMISSIONER SKOP: Right. And I think the

1 point is well taken. The counterpoint I would
2 respectfully make would be that the customers have
3 received the benefit of the economic useful life of that
4 point prior to the change in the standardization. And,
5 again, Progress, if they do have a failure which would
6 further put the companies on notice, Progress has
7 repaired or maintained those lines and they will provide
8 a temporary interconnection. But what they've done
9 effectively is when the line wears out, whether it be 50
10 years from now, 30 years from now, tomorrow, essentially
11 from the point of delivery, that's where, you know, the
12 change to the handbook dating back to 1994 was made.
13 And I don't think that there's an impact per se to the
14 customers. Again, they've benefited from that. But
15 it's to the detriment -- not to change this to me would
16 be to the detriment of the general body of ratepayers
17 that has to pay to maintain that extra facility that was
18 previously committed to.

19 So, again, it's a standardization effort over
20 time, and the beneficiaries of that have gotten the
21 economic value of that connection point beyond the point
22 of delivery. And now it's being standardized back as
23 early as 1994. So, again, that's a 15, almost two
24 decades of benefit, and that's -- the lines continue to
25 be maintained until such time as they wear out, and that

1 may be 30 years now in the future.

2 COMMISSIONER ARGENZIANO: But I want, I really
3 want to get it straight. I understand, I think, what
4 you're talking about, but what I need is a little more.
5 Because what you're saying is that they've had the
6 benefit. Now it's been since 1994. Could the tariffs
7 have been changed? And wait a minute, hold on one
8 second. And I guess the other part of that is I
9 understand what you're saying, but when you say -- if
10 I'm the person who has some type of an understanding or
11 a contract, let's say, let's put it in those terms
12 because that's the best way I could deal with it, and
13 I'm thinking that you're going to take care of this or
14 this is your responsibility, I understand that things
15 change but I need to know about them. And if I don't
16 know about them, what you're saying is, well, tough,
17 because you still have the benefit of all the time. And
18 I'm not sure that that does it for me. And is it since
19 1994 -- and I guess it is because when I read that, but
20 could they have changed the tariff? And I'm not, I
21 personally think, you know, the company is saying from
22 here to here is their responsibility is fine. That's
23 not my problem. I just want to understand how did
24 the -- could a possible affected person have known and
25 what could have been done at that time?

1 MS. KUMMER: Well, the tariffs, as
2 Commissioner Skop pointed out, there's nothing wrong
3 with the tariffs in particular and what they currently
4 say. The current tariffs are just not that specific.
5 They don't specifically address the point of
6 demarcation.

7 Progress routinely handles construction
8 practices, length of line, size of transformer, through
9 their construction manual. And they saw this simply as
10 another variation on construction, not necessarily
11 change in policy because the tariff didn't address it
12 specifically. And when we saw this, it was staff who
13 asked them to come in and file the tariff because I felt
14 that it should be in the tariff. I thought that it
15 would be clearer to other customers.

16 What happens now is that, and will happen in
17 the future is that Progress will maintain whatever is
18 out there right now up until the point that the line
19 fails. If the line fails, they will patch it if they
20 can or they will install overhead service to ensure the
21 customer is not out of service until that customer can
22 repair the line.

23 COMMISSIONER ARGENZIANO: And you have not
24 heard from any of the commercial customers in regards to
25 --

1 MS. KUMMER: Only, only the City of St. Pete
2 is the only complaint we've gotten in the 14 years, 15
3 years.

4 COMMISSIONER SKOP: Mr. Chair.

5 CHAIRMAN CARTER: One second. I want to go to
6 Commissioner McMurrrian.

7 COMMISSIONER SKOP: Okay. Sorry.

8 CHAIRMAN CARTER: And then I'll come back,
9 because she's been very patient. Commissioner
10 McMurrrian, you're recognized.

11 COMMISSIONER McMURRIAN: Thank you. I think
12 what you were just saying in response to what
13 Commissioner Argenziano is asking, it seemed important
14 to me, I want to get clear too, does the tariff lay out
15 the procedure for the customer or does it just reference
16 the handbook? Because I think that's important in that
17 does it give the customer an impression that it's got to
18 be done this way, but then if you looked at the
19 handbook, it suggested something else? Or is it that it
20 just references the handbook which lays out the details?
21 Am I on the right -- okay.

22 MS. KUMMER: The tariff language is very
23 general. It does not speak to -- it just says the
24 demarcation point is the delineation between the company
25 and the customers' facilities. It doesn't say that it's

1 a pad-mounted transformer or anything else. So the
2 tariff language itself does not got to that specific
3 level.

4 COMMISSIONER McMURRIAN: So there wouldn't be
5 an understanding of the customer of one thing if he
6 didn't go look in the handbook and then he'd see, he
7 might see something else?

8 MS. KUMMER: I don't believe that would be the
9 case.

10 COMMISSIONER ARGENZIANO: Mr. Chair.

11 CHAIRMAN CARTER: You're recognized.

12 COMMISSIONER ARGENZIANO: And that's what I
13 was trying to get at exactly. What would give the
14 customer the impression that -- for you to leave the
15 door open you must have felt there had been some
16 impression by a consumer or customer somewhere, a
17 commercial customer that they may have not been covered
18 this, in this way. And if there isn't any, well, then I
19 don't know what we're arguing about. So that's, that's
20 the point I'm trying to get at.

21 MS. KUMMER: The only reason, Commissioner,
22 quite honestly, that I put that language in there is
23 because of that second complaint that alleges there are
24 other people out there.

25 COMMISSIONER ARGENZIANO: Let me ask you what

1 happened with the second complaint.

2 MS. KUMMER: The second complaint was filed by
3 a consultant. He objected first of all to the idea that
4 this was done through the handbook rather than the
5 tariff. We fixed that by requiring them to file a
6 tariff. He also alleges that he knows about three or
7 four other customers who have been negatively impacted
8 by this. He provided no names, no information.

9 COMMISSIONER ARGENZIANO: Yeah. That's --

10 MS. KUMMER: And that's why the staff
11 recommendation is worded as based on the information
12 available staff believes there is no basis to grant
13 relief. We don't have anything in hand to look at to
14 see whether those are right or wrong. But I, again,
15 just because I've done so many customer complaints, I
16 was a little uncomfortable closing the door completely
17 on, you know, on the off chance that there is somebody
18 out there who can show something. That's, that's just,
19 that was a personal preference on my part actually.

20 CHAIRMAN CARTER: Okay. Commissioner
21 McMurrian.

22 COMMISSIONER McMURRIAN: Thank you. And so
23 the one other -- and actually my original question was
24 going back to this close the door thing we keep talking
25 about.

1 I guess when I looked at Commissioner Skop's
2 language, I didn't, I don't have a problem with either
3 set of language. And I guess my thinking is, and I want
4 to give you a chance to respond, is that we never really
5 can close door, the door on customer complaints. I
6 mean, customers can always file. We can, we can approve
7 Commissioner Skop's language, and in my mind a customer
8 can still come in and say I've got a problem with the
9 way Progress has handled this for whatever reason, and
10 we don't know, we can't really dream up what it would be
11 that they would say that might make us look closer at
12 it. And if we were in that position, then we can.

13 I do think though that Commissioner Skop's
14 language probably is more clear that if this were in an
15 order, it's the Commission's intent that we interpret it
16 this way, and that it would be more clear if we got
17 complaints later what, what our understanding of how it
18 should be is so that we would have something more clear
19 to compare a customer complaint to about what the
20 practice should be going forward and that it would be
21 better for everyone's understanding. But I want to let
22 you -- but in my mind we can't really close the door on
23 customer complaints.

24 MS. KUMMER: You're absolutely right,
25 Commissioner. Any customer can challenge any tariff at

1 any time. That's never been an issue. It's, again,
2 it's Commissioners' preference. I'm comfortable either
3 way.

4 COMMISSIONER McMURRIAN: That's where I am,
5 Commissioners. But thank you, Chairman.

6 CHAIRMAN CARTER: Commissioner Skop.

7 COMMISSIONER SKOP: Thank you, Mr. Chairman.

8 Just a point that came up in a prior question
9 to staff. I guess the reason that I had the concern I
10 have is not to circumvent process. Again, a customer
11 can file a complaint at any time. But, again, the staff
12 recommendation in my mind is somewhat unclear to the
13 extent, and, again, I quote at the bottom of Page 7,
14 "Staff does not believe there is sufficient information
15 to grant relief to any customer at this point." Okay.
16 So that says one thing. And in counterpoint, the staff
17 recommendation leaves it open to consider complaints on
18 a case-by-case basis. If there's no basis to grant
19 relief now, how is there basis to grant relief later? I
20 mean, it's inconsistent outcomes.

21 Again, my concern just succinctly would be
22 that if the handbook which was incorporated by reference
23 has changed back to 1994 and we're not going to grant
24 relief now, then how can we possibly grant relief later?

25 So I concur with Commissioner McMurrian, if I

1 thought I heard her correctly, to the extent that the
2 proposed modification that I'm asking the Commission to
3 consider adopting brings some clarity in terms of
4 resolving complaints on a forward-going basis. What I
5 feel staff has done is left it open-ended to the extent
6 that you have additional basis to, you know, evaluate a
7 complaint.

8 And, again, there seems to be no
9 standardization or no definitization as to how a claim
10 would be approached. And I think that by referencing
11 the prior modifications to the handbook it brings
12 sufficient clarity on how the Commission will address
13 future complaints to the extent that, again, as they, as
14 they come in, the handbook has been changed that
15 provided at least in my mind, in my legal judgment
16 constructive notice. And certainly Progress maintaining
17 the lines, if a line were to fail or repairing those
18 until they're not economical, provides additional notice
19 and the Commission action provides actual notice.

20 But, again, beyond that point I think there
21 was one other one I wanted to make and it dealt with --
22 give me one second.

23 CHAIRMAN CARTER: Commissioner, while you're
24 getting your thoughts together, let me just take a
25 moment to listen to Mr. Burnett. He's been very patient

1 and we've been discussing -- I did want to let the flow
2 go where the flow was going, but I do want to take a
3 moment.

4 Mr. Burnett, good morning. You're recognized.

5 MR. BURNETT: Good morning, sir. Thank you.
6 I think I can help Commissioner Argenziano's questions
7 significantly.

8 Commissioners, the service handbook that has
9 been referred to several times, this is a handbook that
10 the Commission I think in its wisdom has allowed the
11 company to make changes to things that have no financial
12 impact on the customers.

13 For example, there are some, there's some
14 schematics in here about how high service drops need to
15 be over moving vehicles versus nonmoving vehicles and
16 how high off the ground. That's the kind of stuff that
17 the Commission in its wisdom says I don't want that in a
18 tariff. You know, every time we change from 4.5 inches
19 to 6.2, I don't want you in here making this change.

20 And this handbook, as Commissioner Skop noted,
21 is part, it's incorporated in our tariff actually, so
22 it's mentioned in our formal tariff, it's on our website
23 and it's distributed to our customers.

24 This issue back in 1994 is one where the
25 customer is not harmed. They pay us to do this,

1 Commissioner, or they pay someone else, but in either
2 way they're paying money. One of the key reasons that
3 the customers back in 1994 enjoyed this policy with some
4 of the other utilities that were doing it this way
5 already and encouraged us to do it this way as well is
6 because they could do it cheaper. They could simply
7 make choices on their end to where they could put these
8 services in the ground cheaper than we can. So that
9 explains why in 15 years no one has complained. And
10 certainly when we -- the one complaint we did have, when
11 we went through this with them, they understood that,
12 you know, had they actually worked with us, they would
13 have spent more money. And as Commissioner Skop has
14 said, over the 20 or so years they've enjoyed the
15 benefit of saying here are your choices in '94. You can
16 take ours out of the ground now, put your own in, or, as
17 Commissioner Skop said, we said, but to be fair to you,
18 we'll let you enjoy this benefit as long as you want it
19 until it expires.

20 So the point is this has been something that's
21 had a zero impact on the customers. If it's done
22 anything, it's given them the benefit of not having to
23 spend money for as long this cable has lived. So I
24 think Commissioner Skop has said if a customer
25 complains, they would have nothing to complain about.

1 Probably they would owe the company money, if anything,
2 because they've enjoyed, you know, us coming out, O&M on
3 our nickel that we're not charging the ratepayers for to
4 do anything that we've done with these in the field, so.

5 CHAIRMAN CARTER: Commissioner Argenziano.

6 COMMISSIONER ARGENZIANO: And I got it with
7 Commissioner McMurrian's -- it had to do with the tariff
8 for me.

9 MR. BURNETT: Yes, ma'am.

10 COMMISSIONER ARGENZIANO: Because I wanted to
11 make sure that there wasn't something that was said in
12 the tariff, that was described in the tariff that
13 suddenly was changed. And it could be changed, you
14 know, as long as everybody is informed of that. And
15 then I got it with that. That is what helped me and I
16 understood -- to understand. And I understand staff's
17 concern because they heard -- but with all due respect,
18 a consultant who hasn't come up with any proof or there
19 is no complaints in all these years, you know --

20 MR. BURNETT: Yes, ma'am. I will, I will let
21 you know as well, just to provide you further comfort,
22 that our CIG group, our commercial industrial customers
23 group that is in charge of our interface with all our
24 commercial industrial customers, in anticipation of this
25 and throughout this process we've polled with our

1 customers and said if anyone has a complaint, we'd
2 rather, you know, have it heard now if you guys have
3 concerns. And we've not been able to identify any such
4 customer as well.

5 COMMISSIONER ARGENZIANO: Sure. Sure. Great.
6 Thank you.

7 CHAIRMAN CARTER: Thank you. I did want to --
8 and Commissioner Skop was getting his thoughts together,
9 but I did want to get, since Mr. Burnett was here, have
10 an opportunity for the company to be heard on this
11 matter.

12 Commissioner Skop, you're recognized, sir.

13 COMMISSIONER SKOP: Thank you, Mr. Chairman.
14 And I apologize. I had to compile my notes.

15 But the second point I wanted to make is with
16 respect to the much ado about the second complaintant
17 who is a consultant. But, again, as a consultant I
18 seriously question whether he would have standing to
19 bring an action on behalf of customers.

20 And, secondly, the alleged other customers he
21 knows of, I would consider that to be hearsay. But if
22 you read the background, he seems to be somewhat of a,
23 he was on the committee, and I don't know whether you
24 could call that disgruntled or not, but I just, I don't
25 see a whole lot of merit on that. If you're going to

1 bring a claim, bring it on an individual basis. But --

2 CHAIRMAN CARTER: Commissioners, any further
3 questions for Mr. Burnett? Any further questions for
4 staff? Okay.

5 Commissioner McMurrin.

6 COMMISSIONER McMURRIAN: I just wonder if we
7 should be clear if we're going to adopt this language if
8 there's other information in the staff analysis because,
9 of course, often the staff analysis becomes part of the
10 order as well. So are there things -- I mean, perhaps
11 the last sentence on Page 7, I know that you pointed
12 that out, might be consistent with your modification to
13 the staff rec, but anyway.

14 CHAIRMAN CARTER: You're recognized, sir.

15 COMMISSIONER SKOP: Thank you, Mr. Chairman.

16 My recommendation would be to strike that and
17 just basically, again, the order would reflect the fact
18 that as a result of the prior modifications to the
19 handbook, pursuant to the draft language that everyone
20 has before them, there's no basis to grant the relief
21 requested. And then it speaks to that Progress will
22 continue to maintain the lines until it's no longer
23 economically feasible. And then when it's no longer
24 economically feasible, replacement would be the option
25 at the C/I customer expense.

1 But it basically would be incorporating the
2 language that we have here and deleting reference to,
3 you know, specific reference. I mean, any customer can
4 always file a complaint in an informal process. But,
5 again, I think the clarification or tightening of the
6 language makes it clearer in terms of that the issue has
7 been resolved definitively. And I'll just leave it to
8 the will of the Commission as to whether to adopt the
9 proposed language.

10 MS. KUMMER: And, Commissioners, if I might,
11 we'll go through the recommendation carefully to make
12 sure that there aren't more references in there.

13 CHAIRMAN CARTER: Commissioner Argenziano.

14 COMMISSIONER ARGENZIANO: Well, with that
15 said, I'll move the adoption of the modification.

16 COMMISSIONER McMURRIAN: Second.

17 CHAIRMAN CARTER: Commissioners, we have a
18 motion to adopt staff's recommendation with the
19 modification language provided by Commissioner Skop.
20 And staff would take this language and incorporate it
21 throughout the record such that the record would be, the
22 recommendation rather will be consistent with that. Is
23 that the flavor of the motion and the second?

24 COMMISSIONER McMURRIAN: Yes.

25 CHAIRMAN CARTER: Okay. Now we're in debate.

1 We're in debate. Any debate? Any discussion? Any
2 further questions? All in favor, let it be known by the
3 sign of aye.

4 (Unanimous affirmative vote.)

5 All those opposed, like sign. Show it done.

6 And thank you, Mr. Burnett.

7 MR. BURNETT: Yes, sir.

8 (Agenda Item 12 concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


1 STATE OF FLORIDA)
2 COUNTY OF LEON) ; CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED this 16th day of April, 2009.

19
20
21
22
23
24
25

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734