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From: Tim Perry [tperry@mac-law.com]
Sent: Wednesday, November 17, 2004 2:27 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 041272-EI - Petition to Intervene

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is responsible for this electronic filing;
2. The filing is to be made in Docket No. 041272-EI, *In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan; by Progress Energy Florida, Inc.*;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 6; and
5. Attached to this e-mail in Adobe format is the Florida Industrial Power Users Group's Petition to Intervene.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

Docket No: 041272-EI
Filed: November 17, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE**

Pursuant to Chapter 120, Florida Statutes, and rules 25-22.039 and 28-106.205, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG), through its undersigned counsel, files its Petition to Intervene. In support thereof, FIPUG states:

1. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

2. The name and address of the Petitioner is:

Florida Industrial Power Users Group
c/o McWhirter, Reeves, McGlothlin, Davidson,
Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Telecopier: (813) 221-1854

3. Copies of all pleadings, notices, and orders in this docket should be provided to:

John W. McWhirter
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4. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets.

5. Statement of Affected Interests. The Commission will decide in this docket whether to approve Progress Energy Florida, Inc.'s (PEF) request to implement a "Storm Cost Recovery Clause" to allow Progress to recover \$251.9 million in storm-related costs. In addition, the Commission must decide whether PEF's request violates the Stipulation and Settlement entered into in PEF's last rate case, which was approved by, and incorporated into, Commission Order No. PSC-02-0655-AS-EI (Rate Case Order). The Rate Case Order prohibits PEF from petitioning for an increase in its base rates and charges that would take effect prior to December 31, 2005.¹ PEF seeks to circumvent the Rate Case Order by requesting the creation of a guaranteed cost recovery clause for reimbursement of storm-related costs that are base rate items. As a signatory to the Stipulation and Settlement and as ratepayers of PEF, FIPUG's substantial interests will be affected by any action the Commission takes in this docket.

6. FIPUG's interests are of the type that this proceeding is designed to protect. See, Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). The purpose of the proceeding is to evaluate PEF's request, to review the nature of its costs and expenditures to determine if any such costs are appropriate for recovery, to review the manner in which PEF requests to recover such costs, and to review whether PEF's request

violates the Rate Case Order. These issues will affect FIPUG members' substantial interests by potentially increasing their costs of electricity, thus affecting their production costs, their competitive posture, and their levels of employment. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that costs passed onto members from PEF are reasonable and prudent.

7. Disputed Issues of Material Fact. FIPUG anticipates that, upon receiving and reviewing appropriate documentation regarding the costs at issue, there will be numerous disputed issues of material fact which the Commission will be required to resolve through an evidentiary hearing pursuant to Chapter 120, Florida Statutes. Such disputed issues of material fact include, but are not limited to, the following:

- a. What is the appropriate recovery period for any storm-related costs the Commission permits PEF to recover?
- b. Did PEF act reasonably and prudently prior to the storms to minimize storm-related costs?
- c. Have all costs incurred in the normal course of business been removed from PEF's request?
- d. Has PEF appropriately booked and accounted for storm-related costs?
- e. What is the amount of PEF's reasonably and prudently incurred storm-related costs?
- f. Should all or some of PEF's storm-related costs be absorbed through base rates?
- g. What ROE should be applicable to PEF?
- h. What is the proper mechanism for PEF to recover storm-related costs?

8. Disputed Legal Issues. Disputed legal issues include, but are not limited to, the following:

¹ See Order No. PSC-02-0655-AS-EI at 15, ¶ 4.

- a. Does PEF's request violate the terms of the Settlement and Stipulation approved by, and incorporated into, Commission Order No. PSC-02-0655-AS-EI?
- b. Does the Commission have the statutory authority to create a new cost recovery clause?
- c. Is PEF entitled to any recovery if it cannot prove it is earning below its authorized ROE?

9. Statement of Ultimate Facts Alleged. Ultimate facts include, but are not limited to, the following:

- a. PEF has the burden to prove that its request does not violate the terms of the Settlement and Stipulation approved by, and incorporated into, Commission Order No. PSC-02-0655-AS-EI.
- b. PEF has the burden to prove and document all alleged storm-related costs for which it seeks recovery;
- c. PEF has the burden to prove that such costs have been appropriately accounted for and booked;
- d. PEF has the burden to prove that no costs are included in its recovery request that are part of ordinary operations and maintenance expenses;
- e. PEF has the burden to prove that no costs for which it seeks recovery are or should be included in base rates.
- f. PEF has the burden to prove that all costs for which PEF seeks recovery were reasonably and prudently incurred.

WHEREFORE, FIPUG requests the Commission to enter an order allowing it to intervene as a fully party in this docket.

s/ Timothy J. Perry

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail and U.S. Mail this 17th day of November 2004, to the following:

Jennifer Brubaker
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s/ Timothy J. Perry
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