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April 18, 2005

BY HAND DELIVERY

Blanca Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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COMMISSION
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Re: Petition for Rate Increase by Progress Energy Florida,
Inc., Docket No. 050078-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the Florida Retail Federation's Response to Progress Energy's Motion to Dismiss in the above-styled docket. Also enclosed is a 3.5" diskette with the FRF's pleading in Word format. I will appreciate your confirming receipt of this filing by stamping the attached copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,

John T. LaVIA, III

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by)
Progress Energy Florida, Inc.)
_____)

DOCKET NO. 050078-EI
FILED: APRIL 18, 2005

RESPONSE TO PROGRESS ENERGY'S MOTION TO DISMISS

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), hereby files its response to Progress Energy Florida, Inc.'s ("PEF" or "Progress") motion to dismiss the FRF's petition asking the Commission to conduct a general investigation of the appropriate rates to be charged by PEF upon the expiration of the current Stipulation and Settlement entered into in 2002,¹ and to conduct a hearing in that case in accordance with Chapters 120 and 366, Florida Statutes.²

In summary, PEF contends that the FRF cannot initiate a general rate case for PEF, and that the FRF's request is redundant and superfluous. As explained more fully below, the FRF has standing to initiate a general rate case pursuant to relevant provisions of Chapter 366, and pursuant to the Florida Supreme Court's pronouncements in South Florida Hospital &

¹ See In Re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, Docket No. 000824-EI, Order No. PSC-02-0655-AS-EI (Fla. Pub. Serv. Comm'n, May 14, 2002).

² All references herein to the Florida Statutes are to the 2004 edition thereof.

Healthcare Ass'n v. Jaber, 887 So. 2d 1210 (Fla. 2004). Any "redundancy" or "superfluity" theory must fail in light of this authority; if the FRF is entitled to a hearing on PEF's rates, it should not matter whether the FRF requests such hearing now or whether it waits several months. Moreover, while it is the FRF's fervent hope that its request does, in fact, turn out to have been unnecessary, the FRF is entitled to protection - by the granting of its request now - against the case in which its request turns out to be needed. Finally, administrative efficiency militates strongly in favor of granting the FRF's request now, in light of the fact that, pursuant to South Florida Hospital, the FRF would clearly be entitled to have it granted later.

In its Petition to Intervene, Petition to Conduct General Rate Case, and Request for Hearing, the Florida Retail Federation cited as statutory authority for its petitions Sections 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes. Section 366.06(2) provides, in pertinent part, that the Commission may consider "upon request made" whether the rates charged by a public utility are fair, just, and reasonable; there is no limitation on who may make such a request. Additionally, Section 366.07 provides that the Commission is to conduct hearings on utility's rates "either upon its own motion or upon complaint." Both of these sections provide ample basis for the FRF's standing to request a hearing on PEF's rates. Moreover, albeit dicta, the Florida Supreme Court has clearly articulated a view of the statutory scheme in which non-

signatories to rate case settlement agreements cannot be precluded from petitioning for rate relief beyond that reached through a settlement by some parties. **The FRF strongly believes** that this establishes standing for the FRF to request a general rate investigation and hearing, and it should not and does not matter when the FRF makes its request. (Regarding PEF's suggestion that this might somehow open the floodgates to multiple untimely rate case requests, the FRF would simply note that the PSC can rule that requests are not timely, where, e.g., a customer or customer group petitions for new rates hard on the heels of a recent rate case order. That situation does not exist here, however, in that PEF's last rate proceeding was concluded 3 years ago, and the FRF's request is timed specifically to seek relief upon the expiration of the stipulation that resolved that proceeding.)

PEF's redundancy and superfluity arguments must fail in light of the FRF's standing to request a rate case and a hearing. Moreover, the FRF's request is not superfluous or redundant because there are potential outcomes of these proceedings (like the outcome in South Florida Hospital) wherein the request would not be unnecessary, and administrative efficiency would be best served by granting the FRF's request now.

The FRF sincerely hopes that its request will, in fact, turn out to have been unnecessary, in that either the hearing will be held as requested by the FRF and anticipated by Progress, or the case will be settled by all parties, including the FRF. To that end, as stated in its Petition, the FRF stands fully ready to

participate in good faith in negotiations toward resolving this case via another stipulation and settlement. However, there is another real possibility - namely that the case might be settled by other parties in a manner that the FRF believes unfair or unreasonable - and it is that possibility, combined with the FRF's standing to request a rate case and hearing pursuant to Sections 366.06(2) and 366.07, Florida Statutes, and the Florida Supreme Court's clear declaration that entities like the FRF may petition for a hearing and proceed with such hearing based upon the record developed, that makes the FRF's request not superfluous.

Additionally, administrative efficiency would be best served by granting the FRF's request now. It is clear that, in the un hoped-for event that the case were to be settled by other parties in a manner that the FRF believes unfair or unreasonable, the FRF may petition for a hearing and use the record developed in this proceeding up to the point of the settlement. **Denying** the FRF's petition now would likely leave the FRF, and any similarly situated parties, facing a delay of several months if that un hoped-for event were to occur. This makes no sense - if, as the Supreme Court has stated, the FRF is entitled to petition for additional rate relief based on the record already developed, then the hearing should go forward as soon as possible in any event. Keeping the hearing on the schedule that will be established by the normal Order Establishing Procedure, unless the case is settled by all parties, will accomplish this goal most efficiently.

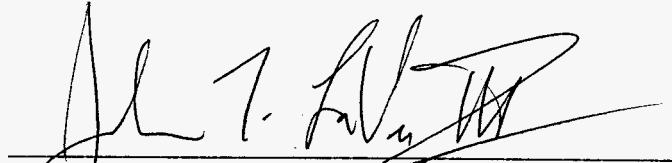
CONCLUSION

The Florida Retail Federation is entitled to petition for a general rate case and a hearing pursuant to Sections 366.06(2) and 366.07, Florida Statutes. The FRF's rights have at least been strongly supported by the Florida Supreme Court in South Florida Hospital. Even if redundancy or superfluity were valid arguments against these statutory provisions (an argument with which the FRF disagrees), the FRF's request is not superfluous because it will protect against a real, possible outcome, albeit one undesired and unhoped-for by the FRF, and because, should that unhoped-for outcome materialize, administrative efficiency will be best served by granting the FRF's request now.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, the Florida Retail Federation respectfully requests that the Florida Public Service Commission DENY Progress Energy Florida's motion to dismiss the FRF's Petition To Conduct a General Rate Case and Request for Hearing.

Respectfully submitted this 18th day of April, 2005.

A handwritten signature in black ink, appearing to read "John T. LaVia, III", written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail, hand delivery (*) or facsimile and U.S. Mail (**) on this 18th day of April, 2005, on the following:

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