

Matilda Sanders

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Sent: Friday, November 17, 2006 6:38 PM
To: Filings@psc.state.fl.us
Cc: JWalls@CarltonFields.com; Lisa Bennett; Harold Mclean; Joe McGlothlin; Paul Lewis; Alex.Glenn; Schef Wright; Mike Twomey; Patty Christensen, Esq.
Subject: Docket 060642 filing
Attachments: FIPUG PETITION TO INTERVENE.doc

ORIGINAL

1. John W. McWhirter, Jr., McWhirter Reeves & Davidson, P.A., 400 N. Tampa St. Tampa, FL 33602, jmcwhirter@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket ~~060652~~-E1, In re: Progress Energy Certificate of Need et al The filing is made on behalf of the Florida Industrial Power Users Group; *060642-E1*
3. The total number of pages is 4; and *max*
4. The attached document is The Florida Industrial Power User Group's Petition to Intervene.

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DOCUMENT NUMBER-DATE
 10602 NOV 20 06
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through fuel clause, by Progress Energy Florida

Docket No.: 060642-EI

Submitted for filing November 20, 2006

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 name and address of 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, & Davidson, P.A.

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

John W. McWhirter, Jr.
McWhirter, Reeves, & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
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- 4. FIPUG is an ad hoc association consisting of industrial users of electricity in PEF's service territory. The cost of electricity constitutes a significant portion of these customers overall costs of production. FIPUG participants require an adequate, reasonably priced and reliable supply of electricity in order to compete in their respective markets.

DOCUMENT NUMBER-DATE

10602 NOV 20 06

FPSC-COMMISSION CLERK

5. Statement of Affected Interests. FIPUG's interests are of the type that this proceeding is designed to protect. The Commission will decide in this docket whether it should approve PEF's request for an exemption from the bid rule, whether to make a rate increase determination in a need proceeding at least three years before any portion of the proposed new capacity is commercially operative, and to concurrently determine whether to recover base rate expenses through the guaranteed fuel cost recovery clause at a time when PEF is subject to a base rate freeze. These decisions will impact the cost of electricity to FIPUG and other retail customers.

6. The Bid Rule plays an important role in ensuring that a public utility's selection of a capacity addition is the most cost-effective alternative available.¹ PEF concurs that it is unlikely that a RFP will result in a plant renovation that is more cost-effective than PEF's Self-build Option. The primary purpose of the proceeding, to determine the need for additional cost effective generation coincides with FIPUG's substantial interests. The rate making policy PEF seeks adversely impacts FIPUG, is premature and inappropriate in a need proceeding.

7. Disputed Issues of Material Fact.² FIPUG is not opposed to the Commission granting the bid rule exemption requested by PEF if adequate protections are in place for consumers. However, FIPUG has identified the following issues that may need to be addressed by the Commission:

- a. If the Commission grants the relief requested by PEF, what procedures, if any, are necessary to ensure that the costs incurred in constructing the Self-build Option are reasonable and prudent?
- b. The plan to recover base rate costs through the fuel clause, the proper 2011 return and depreciation expense to be allowed on

¹ Rule 25-22.082(1), Florida Administrative Code.

² FIPUG reserves its right to restate or rephrase the above issues, as well as raise additional issues pursuant to Commission rule, procedural order or CASR.

PEF's new investment. The proper method for determining alleged 2011 fuel cost savings from untested innovative technology.

- c. The premature nature of the rate making request and the inappropriate joinder of this request in a certificate of need proceeding.

8. Statement of Ultimate Facts Alleged. To receive an exemption from the Bid Rule, PEF must meet the requirements set forth in Rule 25-22.082(18). When evaluating whether to grant the relief requested by PEF, the Commission should consider what, if any, procedures are necessary to ensure that the cost of the plant constructed by PEF is reasonable and prudent. Further, the Commission should defer any rate determination until the rate freeze ends, the plant is commercially operable and should prohibit the request to recover base rate items through the fuel clause, especially during the current base rate freeze period

9. Statutes and Rules that Require the Relief Requested by FIPUG. Statutes and rules that require the relief requested by FIPUG include, but are not limited to, Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205 and 25-22.082, Florida Administrative Code.

10. Statement Explaining How the Facts Alleged By FIPUG Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. FIPUG participants are PEF retail customers, and accordingly, their substantial interests are subject to determination in and will be affected by the Commission's decision whether to grant PEF an exemption from Rule 25-22.082, Florida Administrative Code in this docket and concurrently deal with electric rates. Accordingly, FIPUG is entitled to intervene herein.

WHEREFORE, FIPUG requests that the Commission enter an order granting its petition to intervene.

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 the 20th day of November 2006, to the following:

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