

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-FPSC

In re: Fuel and Purchased Power Cost )  
Recovery Clause and Generating )  
Performance Incentive Factor )

DOCKET NO. 040001-EI  
Filed: September 17, 2004

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COMMISSION  
CLERK

POWER SYSTEMS MFG., LLC'S PETITION TO INTERVENE

Power Systems Mfg., LLC, ("Power Systems") pursuant to Chapter 120, Florida Statutes and Rules 25-22.039 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, Power Systems is a consumer of electricity provided by Florida Power & Light Company ("FPL") and pays for the costs of the FPL electricity it uses, and petitions to intervene in order to protect its interests in having the Commission determine fair, just, and reasonable purchased power cost recovery charges to be charged by FPL, and in having the Commission take such other action to protect the interests of Power Systems and of all of FPL's customers as the Commission may deem appropriate. In further support of its Petition to Intervene, Power Systems states as follows:

- 1. The name and address of the Petitioner are:

Power Systems Mfg., LLC  
1440 W. Indiantown Road, Suite 200  
Jupiter, Florida 33458  
(561) 354-1100

- 2. All pleadings, orders and correspondence should be directed to Petitioner's

representatives as follows:

Jon C. Moyle, Jr., Esq.  
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FPSC-BUREAU OF RECORDS

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FPSC-COMMISSION CLERK

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

4. This proceeding is designed to address issues relating to practices of FPL in procuring purchased power from third parties, the practices of FPL in contracting for power, and how much of the costs of such purchased power contracted for by FPL may be allowed to recover from FPL consumers, including Power Systems. Power Systems learned, through inquiry of its representative, of FPL's efforts to include in this docket review of the certain purchased power agreements with Southern Company Services, Inc. ("SCSI") on or about September 13, 2004.

#### **POWER SYSTEMS' SUBSTANTIAL INTERESTS**

5. Power Systems is a consumer of electricity provided by FPL and pays for the costs of the FPL electricity it uses. Its business address is 1440 W. Indiantown Road, Suite 200, Jupiter, Florida 33458. The amount of money Power Systems pays for electricity on a monthly basis is the direct result of rates and charges of FPL. Power Systems has an agreement with its landlord whereby Power Systems pays, in addition to its rent, for the electricity it uses. Thus, the costs of that electricity and any increases thereto directly affect the amount paid by Power Systems.

6. The substantial interests of Power Systems are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervener must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervener must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So.2d1359 (Fla. 1982). As a consumer of electricity provided by FPL that pays for the costs of the FPL electricity it uses, Power Systems is subject to the rate impacts that will result from whatever decisions the Commission makes in this proceeding. To the extent that FPL's rates may – and will, if FPL's

claimed purchased power costs paid to certain third parties are approved for recovery through retail rates – be set at levels that are unfair, unjust, and unreasonable, Power Systems’ interests will be immediately and adversely affected. As noted below, Power Systems alleges that: 1) the rates that FPL proposes to charge are unfair, unjust, unreasonable and excessive in that they include costs to be paid to SCSI that are unreasonably and imprudently excessive for Purchase Power Agreements<sup>1</sup>; 2) that the prices to be paid to SCSI pursuant to its Purchase Power Agreements with FPL are due to the use of market power; and 3) the Purchase Power Agreements are not ripe for approval in this proceeding as the Agreements provide for the delivery of energy and capacity beginning on June 1, 2010, and, thus, any decision on the reasonableness and fairness of such Purchase Power Agreements should be deferred or determined in a separate, spin off docket as these Purchase Power Agreements represent a massive commitment of FPL resources. This proceeding is designed to protect persons who use and pay for electricity provided by FPL, such as Power Systems, against practices and charges that are unfair, unjust, and unreasonable.

#### **DISPUTED ISSUES OF MATERIAL FACT**

7. Disputed issues of material fact include, but are not limited to, the following:
  - Issue 1: **Do the Purchase Power Agreements between FPL and SCSI set forth pricing terms that are fair, just, reasonable and not excessive?**
  - Issue 2: Can it be determined that the pricing set forth in the Purchase Power Agreements between FPL and SCSI and its corporate affiliates are fair, just, reasonable, and not excessive when SCSI and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the Federal Energy Regulatory Commission (“FERC”) for determining market power?
  - Issue 3: Do the Purchase Power Agreements between FPL and SCSI account for a transmission loss factor, lack of dual fuel capability, or the

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<sup>1</sup> The use of the term Purchase Power Agreements includes contracts between FPL and Southern Company Services, Inc. for output from Scherer Unit 3, Harris Unit 1 and Franklin Unit 1.

generation being located outside of the South Florida area, and if not, what are the appropriate accounting/price reductions that should be applied in evaluating these Purchase Power Agreements?

Issue 4: Did FPL actively and thoroughly investigate the market for purchased power or, in the alternative, self build options for power in the 2010 to 2015 time frame before entering into the Purchase Power Agreements with SCSI?

Issue 5: Do the Purchase Power Agreements FPL executed with SCSI represent the market price for purchased power during the 2010 to 2015 time frame?

Power Systems reserves all rights to raise additional issues of fact, law, and policy in accordance with the procedural requirements established for this proceeding.

#### **ADDITIONAL ISSUES OF LAW AND FACT**

8. Additionally, Power Systems believes that the following issues, which include issues of law and mixed issues of law and fact, should also be considered and decided in this proceeding:

Issue 6: What, if any, action should the Commission take with respect to FPL's Purchase Power Agreements with SCSI?

Issue 7: Does the Commission have the statutory power to require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power for the 2010 to 2015 time frame represented by the Purchase Power Agreements FPL entered into with SCSI?

Issue 8: If the answer to the preceding issue is affirmative, should the Commission require FPL to conduct an open, impartial competitive procurement or bidding process for the purpose of procuring the most cost-effective purchased power agreement or agreements for the 2010 to 2015 time frame?

Issue 9: Is it reasonable for the Purchase Power Agreements between SCSi and FPL to be approved for rate recovery purposes at this time, given that energy and capacity is not to be provided until June 1, 2010 at the earliest and the counterparty to the Purchase Power Agreements, SCSi, and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by the FERC for determining market power?

**ULTIMATE FACTS THAT ENTITLE POWER SYSTEMS TO RELIEF**

9. The ultimate facts that entitle Power Systems to relief are as follows.
  - a. **Power Systems is a consumer of electricity provided by FPL, pays for the costs of the FPL electricity it uses, and is directly affected by FPL rates.**
  - b. FPL did not sufficiently consider other options, including self-build options and other purchased power options before executing the Purchase Power Agreements with SCSi
  - c. The Purchase Power Agreements between FPL and SCSi were executed at or near a point in time when, by way of an admission contained in a filing made at the FERC, SCSi failed one of the indicative tests used by the FERC for determining market power and, if the Purchase Power Agreements are approved, would result in FPL's purchased power cost recovery charges being unfair, unjust, unreasonable, and excessive.
  - d. No immediate need exists to approve a Purchase Power Agreement between FPL and SCSi that does not provide for the delivery of purchased power until June 1, 2010.
  - e. FPL's costs for its Purchase Power Agreements with SCSi are not reasonable for cost recovery purposes and, to the contrary, are unreasonable, imprudent, and excessive.

## **STATUTES AND RULES THAT ENTITLE POWER SYSTEMS TO RELIEF**

10. The applicable statutes and rules that entitle Power Systems to relief include, but are not limited to, Sections 120.569, 120.57 (1), 366.05 (1), 366.06 (1) & (2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. The following statement explains how the facts alleged by Power Systems 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. As a consumer of electricity provided by FPL that pays for the costs of the FPL electricity it uses, Power Systems' substantial interests are subject to determination in and will be affected through the Commission's decisions in this docket. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over FPL's rates, and FPL's practices affecting rates, and the Commission's statutory mandate to ensure that FPL's rates are fair, just, and reasonable. The facts alleged herein by Power Systems demonstrate (a) that the Commission's decisions herein will have a significant impact on FPL's purchased power cost recovery rates and charges, and (b) accordingly, that these statutes provide the basis for the relief requested by Power Systems herein.

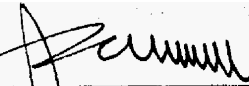
For the reasons set forth herein, Power Systems is entitled to intervene herein. See In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor Docket No. 030001-EI, Order No. PSC-03-1258-PCO-EI, granting intervention to CSX Transportation; In Re: Review of Investor-Owned Elective Utilities Risk Management Policies and Procedures, Docket No. 011605-EI, Order No. PSC-02-0357-PCO-EI, granting intervention to Reliant Energy Power Generation, Inc.; In re: Review of Tampa Electric Company's 2004-2008 Waterborne Transportation Contract with TECO Transport and Associated Benchmark, Docket No. 031033-EI, Order No. PSC-04-0029-PCO-EI, granting intervention to residential electric customers.

## **RELIEF REQUESTED**

**WHEREFORE**, Power Systems respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and authorizing Power Systems

to intervene in the proceeding with full party status, and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Power Systems' representatives indicated in paragraphs 1 and 2 above.

Respectfully submitted this 17th day of September, 2004.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight mail to those listed below with an asterisk and the remainder by U.S. Mail without an asterisk this day the 17<sup>th</sup> day of September, 2004.

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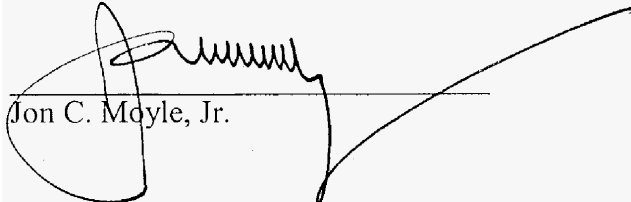
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