

ORIGINAL

Matilda Sanders

From: Tim Perry [tperry@mac-law.com]
Sent: Wednesday, November 17, 2004 1:50 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 041291-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. 041291-EI, *In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.*;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 5; 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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 OTH Tim P.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition for Authority to Recover
Prudently Incurred Storm Restoration
Costs Related to the 2004 Storm Season
That Exceed the Storm Reserve Balance

Docket No: 041291-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
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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 Florida Power & Light Company's (FPL) request to implement a "storm restoration surcharge" in the amount of \$356 million should be approved. The amount of costs, if any, approved for recovery, as well as the mechanism used to recover such costs, will affect FIPUG members' substantial interests by increasing their costs of electricity, thus affecting their production costs, their competitive posture, and their levels of employment.

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 FPL's request and to review the nature of its costs and expenditures to determine if any such costs are appropriate for recovery in the manner FPL requests. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that costs passed onto members, if any, from FPL are reasonable and prudent.

7. Disputed Issues of Material Fact. FPL states in its Petition that it "is not aware of any disputed issue of material fact."¹ However, FIPUG anticipates that, upon receiving and reviewing appropriate documentation regarding the costs at issue, there will be numerous

¹ FPL Petition at 3.

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 FPL to recover?
- b. Did FPL 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 FPL's request?
- d. Has FPL appropriately booked and accounted for storm-related costs?
- e. What is the amount of FPL's reasonably and prudently incurred storm-related costs?
- f. Should all or some of FPL's storm-related costs be absorbed through base rates?
- g. What ROE should be applicable to FPL?
- h. What is the proper mechanism for FPL to recover storm-related costs?

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

- a. Does the Commission have the statutory authority to establish a storm restoration surcharge?
- b. Is FPL 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. FPL has the burden to prove and document all alleged storm-related costs for which it seeks recovery;
- b. FPL has the burden to prove that such costs have been appropriately accounted for and booked;

- c. FPL has the burden to prove that no costs are included in its recovery request that are part of ordinary operations and maintenance expenses;
- d. FPL has the burden to prove that no costs for which it seeks recovery are or should be included in base rates.
- e. FPL has the burden to prove that all costs for which FPL 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:

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s/ Timothy J. Perry
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