

ORIGINAL

Timolyn Henry

From: Mike Twomey [miketwomey@talstar.com]
Sent: Monday, December 27, 2004 4:52 PM
To: Filings@psc.state.fl.us
Cc: Jennifer Brubaker; Joseph McGlothlin; Bonnie Davis; Vicki Gordon Kaufman; Tim Perry; James McGee
Subject: Electronic filing in DOCKET NO. 041272-EI

December 27, 2004
4:50 p.m.

Please file the attached Petition to Intervene of Buddy L. Hansen and the Sugarmill Woods Civic Association, Inc. in the following docket:

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.

The document to be filed in the above-referenced docket consists of a petition to intervene with certificate of service for a total of five (5) pages.

The person who is responsible for electronically filing this document is:

Name: Michael B. Twomey
Address: Post Office Box 5256
Tallahassee, Fl 32314-5256

Phone No.: 850-421-9530
Email: miketwomey@talstar.com

Parties to this docket will be served with a hard-copy of this document this evening.

Mike Twomey **CMP** _____
 COM _____
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FPSC-COMMISSION CLERK

ORIGINAL

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) DOCKET NO. 041272-EI
Frances, Jeanne, and Ivan, by Progress) Filed: December 27, 2004
Energy Florida, Inc.)
_____)

Petition to Intervene

Buddy L. Hansen, individually, and the Sugarmill Woods Civic Association, Inc.,
pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code, hereby file their
Petition to Intervene in this docket and in support thereof state:

1. The names, address and telephone number of Petitioners are:

Buddy L. Hansen
13 Wild Olive Court
Homosassa, Florida 34446
1-352-382-2770

Sugarmill Woods Civic Association, Inc.
c/o Paul Christensen, President
108 Cypress Blvd. W.
Homosassa, Florida 34446
1-352-382-1169

2. The name, address and telephone number of Petitioners' representative for purposes of service during the course of the proceeding are:

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256
850-421-9530
miketwomey@talstar.com

3. Petitioner Buddy L. Hansen is a residential customer of Progress Energy Florida, Inc. (PEF), taking service at the address listed in paragraph 1. The cost of electricity represents one of the larger variable costs in Petitioner's household budget. Therefore, Petitioner will be substantially affected by any action the

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Commission takes in this docket, which will necessarily include retail rate increases if the utility's requested relief is granted.

Petitioner Sugarmill Woods Civic Association, Inc. is a non-profit association representing the interests of homeowners in the Sugarmill Woods community in Citrus County, Florida. The association and the majority of the association's members receive their electric service from Progress Energy Florida, Inc. Therefore, Petitioner and the majority of its members will be substantially affected by any action the Commission takes in this docket, which will necessarily include retail rate increases if the utility's requested relief is granted.

4. Statement of Affected Interests The Commission will decide in this docket whether to approve PEF's request to implement a "Storm Cost Recovery Clause" to allow it to recover \$251.9 million in storm-related costs. Furthermore, the Commission must decide whether PEF's request violates the Stipulation and Settlement Agreement entered into in PEF's last rate case, which was approved by, and incorporated into, Commission Order No. PSC-02-0655-AS-EI (the "Rate Case Order"). It is Buddy Hansen's and Sugarmill Woods Civic Association Inc.'s position that the Rate Case Order, at page 15, prohibits PEF from petitioning for an increase in its base rates and charges that would take effect prior to December 31, 2005. 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 signatories to the Stipulation and Settlement Agreement and as ratepayers of PEF, Buddy Hansen's and Sugarmill Woods Civic Association, Inc.'s substantial interests will be affected by any action the Commission takes in this docket.
5. Buddy Hansen's and Sugarmill Woods Civic Association, Inc.'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. 2nd 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 Buddy Hansen's and Sugarmill Woods Civic Association, Inc.'s substantial interests by potentially increasing their costs of electricity, which necessarily reduce their monies available for other purposes.
6. Disputed Issues of Material Fact Buddy Hansen and Sugarmill Woods Civic Association, Inc. anticipate 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 will include, but not be 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 storm to minimize storm-related costs? Specifically, were PEF's tree-trimming and pole and transformer replacement programs reasonable and prudent and, if not, did failures in those programs exacerbate the level of storm damage experienced and/or lengthen the duration of the outages experienced by its customers?
 - 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?
7. Disputed Legal Issues Disputed legal issues include, but are not limited to, the following:
- A. Does PEF's request violate the terms of the Settlement and Stipulation Agreement approved by the Commission?
 - B. Does the Commission have the statutory authority to create a new cost recovery clause?
 - C. Even if the Commission has the statutory authority to create a new cost recovery clause, can it approve such a charge or surcharge prior to holding an evidentiary hearing on whether the requested amounts for recovery are reasonable, prudent and necessary, even if the charges or surcharges are made subject to refund?
8. 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 Agreement approved by the Commission.

- B. PEF has the burden to prove and document all alleged storm-related costs for which it seeks recovery.
- C. PEF had the burden to prove that such costs have been appropriately accounted for and booked.
- D. PEF has the burden 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.
- G. PEF has the burden of proving that the Commission has the statutory legal authority to approve a surcharge, or other named charge, prior to holding an evidentiary hearing on the amount, reasonableness and prudence of storm-related expenditures, even if such a surcharge or charge is legal and irrespective of whether the surcharge or charge is made subject to refund.

WHEREFORE, Buddy L. Hansen and the Sugarmill Woods Civic Association, Inc.

request that the Florida Public Service Commission grant their Petition to Intervene and accord them full party status in this docket.

/s/ Michael B. Twomey
Michael B. Twomey
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Tallahassee, Florida 32314-5256
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miketwomey@talstar.com

Attorney for Petitioners

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of this Petition to Intervene has been furnished to the following this 27th day of December, 2004, either by U.S. Mail or electronic message attachment:

Jennifer Brubaker, Esquire
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

James A. McGee, Esquire
Progress Energy Service Company
100 Central Avenue
St. Petersburg, Florida 33701-3324

Joseph A. McGlothlin, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

McWhirter Law Firm
Vicki Gordon Kaufman, Esquire
Timothy J. Perry, Esquire
117 S. Gadsden Street
Tallahassee, Florida 32301

/s/ Michael B. Twomey
Michael B. Twomey