

ORIGINAL
LANDERS & PARSONS, P.A.
ATTORNEYS AT LAW

DAVID S. DEE
RONALD A. LABASKY
JOSEPH W. LANDERS, JR.
JOHN T. LAVIA, III
FRED A. McCORMACK
PHILIP S. PARSONS
ROBERT SCHEFFEL WRIGHT

310 WEST COLLEGE AVENUE
TALLAHASSEE, FL 32301

MAILING ADDRESS:
POST OFFICE BOX 271
TALLAHASSEE, FL 32302-0271

TELEPHONE (850) 681-0311
TELECOPY (850) 224-5595
www.landersonparsons.com

March 17, 2005

BY HAND DELIVERY

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MAR 17 PM 4:22
COMMISSION
CLERK

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

Re: Petition of Progress Energy Florida for Approval of Storm
Cost Recovery Charges, Docket No. 041272-EI

Dear Ms. Bayo:


Enclosed for filing are the original and fifteen copies each of the Florida Retail Federation's Petition to Intervene and Prehearing Statement in the above-styled docket. Also enclosed is a 3.5" diskette with the FRF's pleadings in WordPerfect 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,

Robert Scheffel Wright

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of Storm)
Cost Recovery Clause for Recovery of)
Extraordinary Expenditures Related to) DOCKET NO. 041272-EI
Hurricanes Charley, Frances, Jeanne,) FILED: MARCH 17, 2005
and Ivan, by Progress Energy Florida, Inc.)

THE FLORIDA RETAIL FEDERATION'S PETITION TO INTERVENE

The Florida Retail Federation ("FRF"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions to intervene in the above-styled docket. In summary, the FRF is an established association with more than 10,000 members in Florida, many of whom are retail customers of Progress Energy Florida, Inc. ("Progress" or "PEF"). The interests of the many members of the FRF who are Progress customers will be directly affected by the Commission's decisions in this case, and accordingly, the FRF is entitled to intervene to protect its members' substantial interests. In further support of its Petition to Intervene, the FRF states as follows.

1. The name, address, and telephone number of the Petitioner are as follows:

Florida Retail Federation
100 East Jefferson Street
Tallahassee, Florida 32301
Telephone (850) 222-4082
Telecopier (850) 226-4082.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Landers & Parsons, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
(850) 681-0311 Telephone
(850) 224-5595 Facsimile.

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

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

4. The Florida Retail Federation is an established association of more than 10,000 members engaged in retail businesses in Florida. Many of the FRF's members are retail electric customers of Progress; these members purchase electricity from Progress pursuant to several different Progress rate schedules. The FRF's members require adequate, reasonably-priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.

5. Statement of Affected Interests. In this docket, the Commission will decide whether to approve Progress's request to implement "Storm Cost Recovery Clause billing factors" ("Storm Charges") that Progress alleges are necessary to enable Progress to recover \$251.9 million in costs that Progress alleges are related to its efforts to restore electric service following the hurricanes that struck Florida in 2004. The Commission will

necessarily have to decide whether to approve such Storm Charges at all, and if so, at what levels. The Commission must also decide whether Progress's request violates the Stipulation and Settlement entered into in PEF's last rate case, which stipulation was approved by the Commission and incorporated into Commission Order No. PSC-02-0655-AS-EI (the "Rate Case Order"). The Rate Case Order 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 alleged storm-related costs that are properly -- and that the Commission has always treated as -- base rate costs, thereby improperly "sheltering" its earnings under the base rates that it agreed to in the Rate Case Order, to the direct detriment of its customers. As a signatory to the Stipulation and Settlement and as the representative of its members' interests in having the Rate Case Order properly enforced against PEF, the Florida Retail Federation's and its members' substantial interests will be affected by any action that the Commission takes in this docket.

6. The FRF's substantial interests 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 intervenor must demonstrate that its substantial interests will be affected by

the proceeding. Specifically, the intervenor 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. 2d 1359 (Fla. 1982). Here, the FRF is the representative of a large number of retail electric customers of PEF, whose substantial interests will be directly affected by the Commission's decisions regarding Progress's retail electric rates. The Commission's decisions in this docket will directly affect the substantial interests of the FRF's members by directly impacting their retail electric rates and costs. Thus, the interests that the FRF seeks to protect are of sufficient immediacy to warrant intervention, and the nature of its members' interests in having the Commission's protection against rates that are unjust, unfair, or unreasonable is exactly the type of interest that this proceeding is designed to protect.

7. Associational Standing. Under Florida law, to establish standing as an association representing its members' substantial interests, an association such as the Florida Retail Federation must demonstrate three things:

- a. that a substantial number of its members , although not necessarily a majority, are substantially affected by the agency's decisions;
- b. that the intervention by the association is within the

association's general scope of interest and activity;
and

- c. that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The FRF satisfies all of these "associational standing" requirements. A substantial number of the FRF's more than 10,000 members are located in PEF's service area and receive their electric service from PEF, for which they are charged PEF's applicable retail rates. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF was an intervenor in PEF's last general rate case and a signatory to the Stipulation and Settlement that resolved the issues in that docket. Finally, the relief requested -- intervention and the lowest rates consistent with the Commission's governing law -- is across-the-board relief that will apply to all of the FRF's members in the same way, according to the retail rate schedules under which they receive service; therefore, the requested relief is of the type that it is appropriate for an association to obtain on behalf of its members.

8. Disputed Issues of Material Fact. As an intervenor, the FRF takes the case as it finds it. Accordingly, the FRF agrees that the disputed issues of material fact include those

issues designated as Issues 1-14 and 16-23 on the prehearing statements filed by the Florida Industrial Power Users Group and the Office of Public Counsel in this docket.

9. Disputed Legal Issues. Consistent with the FRF's acknowledgment that it takes the case as it finds it, the FRF also agrees that Issues 15 and 24-26 shown in FIPUG's and OPC's prehearing statements are appropriate legal issues to be included in the case.

10. Statement of Ultimate Facts Alleged. Progress is attempting to circumvent the Stipulation and Settlement and thereby to shelter excessive earnings, for the benefit of its stockholders and to the detriment of its captive retail customers, by means of its proposed Storm Charges. PEF is entitled to recover no more than \$121.8 million in claimed storm recovery costs from its customers (including a maximum of \$115.9 million from its retail customers). The balance of PEF's claimed storm recovery costs are not appropriate for recovery.

11. Statutes and Rules That Entitle the Florida Retail Federation to Relief. The applicable statutes and rules that entitle the FRF to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.04(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. Statement Explaining How the Facts Alleged By the Florida Retail Federation 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. A substantial number of the FRF's more than 10,000 members are PEF's retail customers, and accordingly, their substantial interests are subject to determination in and will be affected by the Commission's decisions in this docket. Accordingly, as the representative association of its many members who are PEF customers, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over PEF's rates and the Commission's statutory mandate to ensure that PEF's rates are fair, just, and reasonable. The facts alleged here by the FRF demonstrate (a) that the Commission's decisions herein will have a significant impact on PEF's rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding PEF's rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF herein.

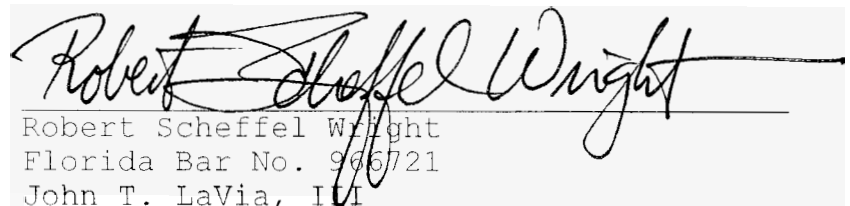
CONCLUSION AND RELIEF REQUESTED

The Florida Retail Federation is an established association that, consistent with its purposes and history of intervening in Commission proceedings to protect its members' interests under

the Commission's statutes, rules, and orders, seeks to intervene in this docket to protect its members' substantial interests in having the Commission enforce its orders and set rates for Progress Energy Florida that are fair, just, and reasonable. The interests of its members that the FRF seeks to protect via its intervention and participation in this case are immediate and of the type to be protected by this proceeding.

WHEREFORE, the Florida Retail Federation respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the FRF's representatives indicated in paragraph 2 above.

Respectfully submitted this 17th day of March, 2005.



Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
LANDERS & PARSONS, P.A.
310 West College Avenue (ZIP 32301)
Post Office Box 271
Tallahassee, Florida 32302
(850) 681-0311 Telephone
(850) 224-5595 Facsimile

Attorneys for the Florida
Retail Federation

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 17th day of March, 2005, on the following:

Jennifer Brubaker, Esq.*
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John W. McWhirter, Esq.
McWhirter Reeves Davidson
Kaufman & Arnold, P.A.
400 North Tampa Street
Tampa, FL 33602

Harold A. McLean, Esq.*
Joseph A. McGlothlin, Esq.
Patricia Christiansen, Esq.
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399

Timothy J. Perry, Esq.*
McWhirter Reeves Davidson
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Gary L. Sasso, Esq.**
James Michael Walls, Esq.
John T. Burnett, Esq.
Carlton Fields, P.A.
4221 West Boy Scout Boulevard
Tampa, FL 33607

Michael B. Twomey, Esq.*
P.O. Box 5256
Tallahassee, FL 32314

R. Alexander Glenn**
Deputy General Counsel
Florida Progress Energy
Service Company, LLC
100 Central Avenue, Suite 1D
St. Petersburg, FL 33701


Attorney