

ORIGINAL

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From: Tim Perry [tperry@mac-law.com]
Sent: Thursday, March 24, 2005 6:46 PM
To: Filings@psc.state.fl.us
Cc: JWM -- John McWhirter; Joe McGlothlin; Patty Christensen; Jennifer Brubaker; Jennifer Rodan; James A. McGee; Glenn, Alex; Gary L. Sasso; John T. Burnett; Walls, J. Michael; Mike Twomey; Scheff Wright (E-mail)
Subject: Docket No. 041272-EI
Attachments: Response in Opposition to PEF's Request for Official Recognition - 3-25-05.pdf

1. Timothy J. Perry, Esq., 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. 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.*;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 3; and
5. Attached to this e-mail in Adobe format is the Florida Industrial Power Users Group's Response in Opposition to PEF's Request for Official Recognition.

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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 Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

Docket No: 041272-EI
Filed: March 25, 2005

FLORIDA INDUSTRIAL POWER USERS GROUP'S RESPONSE IN OPPOSITION TO PROGRESS ENERGY FLORIDA'S REQUEST FOR OFFICIAL RECOGNITION

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, files this response in opposition to Progress Energy Florida's (PEF) request for official recognition. In support thereof, FIPUG states:

1. On March 18, 2005, PEF filed with the Commission its request for official recognition. Attached to the request were twenty numbered exhibits, which correspond to the items that PEF requests that the Commission officially recognize. PEF cited no authority in its request for the Commission taking official recognition of the exhibits.

2. FIPUG is not opposed to the Commission taking recognition of Exhibit Nos. 6 and 8 through 20, which are Commission orders. The Commission has recognized that official recognition is taken on matters that are not in dispute, for example, an official court order.¹ Further, the Commission has recognized in the past that parties are not ordinarily required to make such a request for Commission orders.²

3. However, FIPUG objects to the Commission taking official recognition as to the other exhibits, which are not admissible. The Commission has stated that the best evidence is the presentation of live testimony.³ Therefore, Exhibits 4 and 5 should not be recognized because,

¹ Order No. PSC-92-0326-PCO-WS, Docket Nos. 911030-WS, 911067-WS (May 11, 1992).

² Order No. PSC-04-0497-PCO-WU, Docket No. 021256-WU (May 12, 2004).

³ Order No. PSC-92-0326-PCO-WS.

among other reasons, the testimonies were filed in another docket, the witnesses are not subject to cross-examination, and the testimony was never made part of the record.⁴

4. Exhibit 7 should not be recognized because the Commission has held that Agenda transcripts are not official acts suitable for official recognition.⁵ Likewise, Exhibit 3 is a petition by Florida Power & Light (FPL) to increase its storm accrual fund. FPL's petition was intended to persuade the Commission to grant its plea for relief, and is not an official act suitable for official recognition.⁶

5. Exhibit 1 is not an official act nor does it meet any other requirements for official recognition. The exhibit is a printout from the American Red Cross's webpage.

WHEREFORE, FIPUG requests that the Commission deny PEF's Request for Official Recognition as discussed above.

s/ Timothy J. Perry
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⁴Order No. PSC-00-2349-PCO-WS, Docket No. 000277-WS (December 7, 2000).

⁵ Order No. PSC-92-0076-PCO-EI, Docket No. 911103-EI (March 18, 1992).

⁶ *Id.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's Response in Opposition to Progress Energy Florida's Request For Official Recognition has been furnished by e-mail and U.S. Mail this 25th day of March 2005, to the following:

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