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b. Docket No. 050045-EI; Petition for Rate Increase by Florida Power & Light Company
c. The Commercial Group
d. Supplement (4 pages); Certificate of Service (1 page)
e. Supplement to Petition to Intervene of the Commercial Group

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by) Docket No. 050045-EI
Florida Power and Light Company)
)

**SUPPLEMENT TO PETITION TO INTERVENE
OF THE COMMERCIAL GROUP**

On March 23, 2005, the Commercial Group filed its Petition to Intervene (“Petition”) in the above-captioned proceeding pursuant to Florida Statutes Chapter 120 and Florida Administrative Code Rules 25-22.039 and 28-106.205. On March 31, 2005, Florida Power & Light Company (“FPL”) filed a response to the Petition raising technical claims concerning the sufficiency of the Petition (even though FPL did not raise these claims against other petitions to intervene including the substantially similar petition of the Florida Industrial Power Users Group). However, the Commercial Group does not believe that it is worth the valuable time of the Florida Public Service Commission (“Commission”) to dispute FPL’s admittedly “trivial” claims concerning a standard “vanilla” intervention and it will therefore supplement its petition herewith so as to avoid any controversy.

1.

The Commercial Group is indeed an ad hoc association of commercial customers of FPL that are joining together to protect their interests in this proceeding, thereby minimizing the cost to any individual customer. *Florida Home Builders Ass’n v. Dept. of Labor and Employment Security*, 412 So.2d 351, 353 (Fla. 1982). This association includes such commercial customers as BJ’s Wholesale Club, Inc., Lowe’s Home Centers, Inc., and Wal-Mart Stores East, L.P. In the Petition, the Commercial Group stated that the Commission proposes to examine the rates FPL charges its commercial customers in this proceeding and therefore the Commercial Group has a substantial interest in this proceeding. FPL states that this was not sufficient to demonstrate “that

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the substantial interests of the intervenor ... will be affected through the proceeding.” The Commercial Group would be surprised if FPL truly believed that increasing rates by \$430 million per year did not provide the Commercial Group a substantial interest to protect in this proceeding, particularly since FPL’s filing demonstrates that commercial customers already pay more than their fair share of system costs. Similarly, FPL complains that the Petition is not sufficient to pass the test for administrative standing as per *Agrico Chemical Co. v. Dept. of Environmental Protection*, 406 So. 2d 478 (Fla. 2d DCA 1981). That test is whether 1) the petitioner will suffer injury in fact from the proceeding, and 2) the substantial injury is of a type that the proceeding is designed to protect. *Id.* at 482. Once again, the Commercial Group can attest that if FPL is allowed the rate increase it seeks, the members of the Commercial Group will indeed suffer “injury in fact.” Further, it is obvious that this rate proceeding is designed to protect the rights of FPL customers, including members of the Commercial Group who operate multiple facilities in the FPL service territory.

2.

With respect to the additional information FPL states that the Commercial Group must provide pursuant to Rule 28-106.201 (which provisions appear to be more applicable to petitions to initiate proceedings to reverse some agency action than to petitions to intervene in rate proceedings), the address and telephone number of the Commercial Group is:

The Commercial Group
c/o McKenna Long & Aldridge LLP
One Peachtree Center
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With respect to “when and how the petitioner received notice of the agency decision,” the Commercial Group is not aware that the Commission has reached a decision in this case except an Order Establishing Procedure, to hold hearings and review FPL’s rate increase application. However, members of the Commercial Group received notice of the potential for this case when the members received an email with the subject “FPL to Request 2006 Base Rate Increase” from their respective FPL Account Managers with an attached letter from FPL’s president, Armando Olivera, notifying the Florida Public Service Commission of the company’s intention to seek an increase in base rates on January 21, 2005. As for a “statement of all disputed issues of material fact” and a “statement of the ultimate facts alleged,” the lists might be long indeed. The Commercial Group disputes that FPL has established that it should recover any or all of the \$430 million in additional annual revenue requirements that it seeks to recover from its customers and alleges that FPL should not receive the requested rate increase. Beyond that, the Commercial Group is analyzing FPL’s substantial filing to determine how best it can add value to the efforts of the other parties to this proceeding without unnecessary duplication of those efforts. The Commercial Group intends to file the testimony and exhibits that it will sponsor and a prehearing statement in accordance with the guidelines established in the Commission’s Order Establishing Procedure. The Commercial Group is not aware of a rule or statute that “requires reversal or modification of the agency’s proposed action” and indeed is not aware that the Commission has proposed any specific action that the Commission will take in this proceeding other than the Order Establishing Procedure and to review and carefully consider the testimony and exhibits of the various parties to the proceeding. Finally, with respect to “stating precisely the action petitioner wishes the agency to take,” the Commercial Group desires (or requests) that the Commission establish just and reasonable rates for each FPL customer in this proceeding.

WHEREFORE, the Commercial Group respectfully submits this additional information and requests that the Commission grant the petition of the Commercial Group to intervene in this docket allowing it to participate fully as a party of record.

This 14 day of April, 2005.

Respectfully submitted,

s/David Brown

David Brown

Florida Bar No. 0551325

For McKENNA LONG & ALDRIDGE LLP

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CERTIFICATE OF SERVICE

I, David Brown, an attorney for The Commercial Group, hereby certify that I have served Supplement to Petition To Intervene Of The Commercial Group upon the following parties in Docket No. 050045 by email and by depositing a copy of same in the United States mail with sufficient postage, addressed as follows:

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This 1st day of April, 2005.

s/David Brown
David Brown