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April 4, 2005

BY HAND DELIVERY

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

RECEIVED FPSC  
APR - 4 PM 1:19  
COMMISSION CLERK

Re: Petition of Progress Energy Florida for a Rate Increase, Docket No. 050078-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the Florida Retail Federation's consolidated Petition to Intervene, Petition to Conduct General Rate Case, and Request for Hearing in each of the above-styled docket. Also enclosed is a 3.5" diskette with the FRF's pleading in WORD format. (As we are simultaneously filing for the FRF a similar pleading in PSC Docket No. 050045-EI, both pleadings are included on the same diskette.) 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*  
Robert Scheffel Wright

CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_  
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ECR \_\_\_\_\_  
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SEC 1 \_\_\_\_\_  
OTH Kim P. \_\_\_\_\_

Enclosures

RECEIVED & FILED

*A. Hockard*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Rate Increase by )  
Progress Energy Florida, Inc. ) DOCKET NO. 050078-EI  
\_\_\_\_\_) FILED: APRIL 4, 2005

PETITION TO INTERVENE, PETITION TO CONDUCT GENERAL RATE CASE,  
AND REQUEST FOR HEARING OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation ("FRF"), pursuant to Chapters 120 and 366, Florida Statutes,<sup>1</sup> and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. The FRF also petitions the Florida Public Service Commission to conduct a general investigation (a general rate case) of the rates to be charged by Progress Energy Florida, Inc. ("PEF" or "Progress") upon the expiration of the current Stipulation and Settlement entered into in 2002,<sup>2</sup> and to conduct a hearing in that case in accordance with Chapters 120 and 366, Florida Statutes. The FRF asks and expects that its requested hearing will be the same hearing that the FRF presently expects the Commission to conduct in this docket pursuant to PEF's petition for a rate increase; if such is not the case, however, then, consistent with the Florida

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<sup>1</sup> All references herein to the Florida Statutes are to the 2004 edition thereof.

<sup>2</sup> See In Re: Review of Florida Power Corporation's Earnings, Including Effects of Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, Docket No. 000824-EI, Order No. PSC-02-0655-AS-EI (Fla. Pub. Serv. Comm'n, May 14, 2002).

Supreme Court's opinion in South Florida Hospital & Healthcare Ass'n v. Jaber, the FRF asks the Commission to conduct the hearing in approximately the same time frame and to allow the FRF and all other parties to "access and rely on the evidence and testimony" that will be filed in this Docket No. 050078-EI. See South Florida Hospital & Healthcare Ass'n v. Jaber, 887 So. 2d 1210, 1214 (Fla. 2004). To be clear, the FRF is separately petitioning for a hearing, in an abundance of caution, to ensure that it does not later find itself in the same position that the South Florida Hospital and Healthcare Association found itself at the end of the 2002 FPL general rate proceedings<sup>3</sup> that preceded the Supreme Court's decision cited above. As it did in 2002, the FRF stands fully ready to participate in good faith in any negotiations toward resolving this case via another stipulation and settlement.

In summary, the FRF is an established association with more than 10,000 members in Florida, many of whom are retail customers of PEF. The FRF respectfully petitions for intervention and for the Commission to conduct the requested general rate case to protect its members' interests in having the Commission determine the fair, just, and reasonable rates to be charged by PEF beginning January 1, 2006, i.e., upon the expiration of the

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<sup>3</sup> In Re: Review of the Retail Rates of Florida Power & Light Company, Docket No. 001148-EI, Order No. PSC-02-0501-AS-EI (Fla. Pub. Serv. Comm'n, April 11, 2002).

current Stipulation and Settlement, and in having the Commission take such other action to protect the interests of the FRF's members and of all of PEF's customers as the Commission may deem appropriate. The interests of the many members of the FRF who are PEF 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, Petition for General Rate Case, and Request for Hearing, the Florida Retail Federation 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 in Florida. Many of the FRF's members are retail electric customers of Progress Energy Florida; these members purchase electricity from PEF pursuant to several different PEF 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 PEF's request for a general rate increase. Progress initiated this docket by filing a Test Year Notification on January 28, 2005. PEF's Test Year Notification indicated that PEF intends to file its Minimum Filing Requirements and testimony on or about May 1, 2005. Although PEF's Test Year Notification did not indicate the expected magnitude of PEF's requested rate increase, on information and belief, the FRF believes that the requested increase will exceed \$200 million per year. The Commission will necessarily have to decide whether any rate increases are justified, and if so, the Commission will also have to approve the rates and charges that would enable PEF to recover any authorized increase in PEF's base rate revenues. As the representative of its many members who are PEF retail customers, 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 its more than 10,000 members who are retail electric customers of PEF, and these members' substantial interests will be directly affected by the Commission's decisions regarding PEF's retail electric rates. 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 set rates for PEF that are fair, just, reasonable, and not unduly discriminatory is exactly the type of interest that this proceeding is designed to protect. This is a general rate case, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining PEF's rates.

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 (then

Florida Power Corporation) 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 applicable laws and rules -- 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 is appropriate for an association to obtain on behalf of its members.

8. Disputed Issues of Material Fact. The FRF believes that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the issues listed below. Naturally, at this early point in this docket, the issues stated below are broad, general issues, and the FRF expects that numerous additional, specific issues will be identified and developed as this docket progresses.

Issue: What are the appropriate jurisdictional values of PEF's Plant in Service, Accumulated Depreciation, and Rate Base for setting PEF's rates to be effective as of January 1, 2006?

Issue: What are the appropriate jurisdictional values of PEF's operation and maintenance expenses for setting PEF's rates in this case?

Issue: What is the appropriate capital structure for PEF for the purpose of setting PEF's rates in this case?

Issue: What is the appropriate rate of return on equity for PEF for the purpose of setting PEF's rates in this case?

Issue: How should PEF's costs of providing retail electric



service be allocated to PEF's retail customer classes?

Issue: What are the appropriate rates to be charged by PEF for its services to each customer class?

Issue: What are the appropriate jurisdictional revenue requirements associated with PEF's participation in the GridFlorida Regional Transmission Organization to be used for setting PEF's rates in this case?

Issue: What is the appropriate amount to be included in PEF's base rates for storm restoration accrual?

The FRF reserves all rights to raise additional issues in accordance with the Commission's rules and the anticipated Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. It is PEF's burden to prove that it is entitled to any rate relief, and to meet that burden, PEF must prove that its existing rates and charges are not fair, just, and reasonable. It has been three years since PEF's last general rate proceeding was resolved by the current Stipulation and Settlement, which expires at the end of this year, and it has been many years since the Commission last actually decided disputed issues in a general rate case for PEF's predecessor, Florida Power Corporation. 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 members who are PEF customers, the FRF is entitled to intervene herein.

10. 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. Rule 28-106.201, F.A.C., provides that a petition is the appropriate vehicle by which a party may ask an agency to conduct evidentiary proceedings where disputed issues of material fact are involved. 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 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 in its Petition to Intervene. Additionally, the facts alleged herein demonstrate that the FRF is entitled to a hearing on PEF's rates, because the current Stipulation and Settlement expires at the end of 2005.

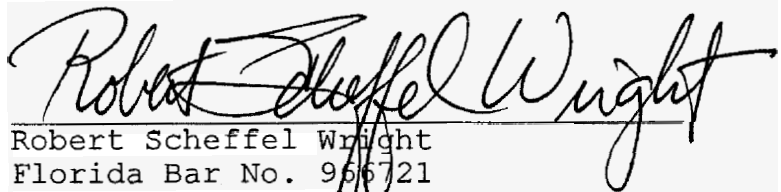
#### CONCLUSION

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, seeks to intervene in this general rate case docket, and requests the Commission to investigate Progress's rates and to conduct a hearing, to protect its members' substantial interests in having the Commission set rates for Progress Energy Florida, Inc. that are fair, just, reasonable, and not unduly discriminatory. The interests of the FRF's 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.

**RELIEF REQUESTED**

WHEREFORE, the Florida Retail Federation respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene, GRANTING the FRF's Petition To Conduct a General Rate Case, and GRANTING the FRF's Request for Hearing, 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 1 above.

Respectfully submitted this 4th day of April, 2005



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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 4th day of April, 2005, on the following:

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Jennifer Brubaker, Esq.  
Jennifer Rodan, Esq.  
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