

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost )  
Recovery Clause with Generation ) DOCKET NO. 050001-EI  
Performance Incentive Factor )  
\_\_\_\_\_ ) FILED: SEPTEMBER 22, 2005

PETITION TO INTERVENE 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 and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. The FRF is an established association with more than 10,000 members in Florida, most of whom are retail customers of one or more of the investor-owned utilities -- Florida Power & Light Company ("FPL"), Progress Energy Florida, Inc. ("Progress"), Tampa Electric Company ("TECO"), Gulf Power Company ("Gulf"), and Florida Public Utilities Company ("FPUC"), collectively referred to as the "IOUs" -- whose fuel cost recovery charges are determined in this docket. The FRF respectfully petitions for intervention to protect its members' interests in having the Commission determine the fair, just, and reasonable rates to be charged by the IOUs, and in having the Commission take such other action to protect the interests of the FRF's members and of all customers served by the IOUs as the Commission may deem appropriate. The interests of the many members of the FRF who are customers of the IOUs will

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<sup>1</sup> All references herein to the Florida Statutes are to the 2005 edition thereof.

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 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  
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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 FPL, Progress, TECO, and Gulf, and at least some of the FRF's members are customers of FPUC. 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 the IOUs' requests for fuel and purchased power cost recovery charges, including true-up amounts for costs already incurred and projected future costs. At least FPL, Progress, TECO, and FPUC have indicated that they are in significant "under-recovery" positions for 2005, meaning that their costs have been significantly greater than were projected when their current fuel charges were set. The Commission will necessarily have to decide how much, if any, of these additional costs are justified, and the Commission will also have to approve the rates and charges that would enable the IOUs to recover such costs, as well as their projected future costs. As the representative of its many members who are retail customers of the IOUs, 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. Dep't 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 the IOUs, and these members' substantial interests will be directly affected by the Commission's decisions regarding the IOUs' fuel charges. 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 fuel charges for the IOUs 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 proceeding to review fuel and purchased power costs and to set rates for the recovery of reasonable and prudent fuel and purchased power costs, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining the IOUs' fuel charges.

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 the IOUs' service areas and receive their electric service from the IOUs, for which they are charged the applicable retail rates, including the fuel charges, of the respective IOU. 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 both FPL's 2005 general rate case and Progress's 2005 general rate case, as well as a signatory to the settlement agreements that resolved those dockets. 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 fuel charges applicable to their 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. The FRF expects that additional, specific issues will be identified and developed as this docket progresses.

**Issue:** What are the appropriate final fuel adjustment true-up amounts for the period January 2004 through December 2004?

**Issue:** What are the appropriate estimated fuel adjustment true-up amounts for each of the IOUs for the period January 2005 through December 2005?

**Issue:** What are the appropriate total fuel adjustment true-up amounts to be collected/refunded by each of the IOUs from January 2006 to December 2006?

**Issue:** What are the appropriate projected net fuel and purchased power cost recovery amounts to be included in the recovery factors for each of the IOUs for the period January 2006 through December 2006?

**Issue:** What are the appropriate levelized fuel cost recovery factors for each of the IOUs for the period January 2006 through December 2006?

**Issue:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

The FRF reserves its rights to raise additional issues in accordance with the Commission's rules and the Order Establishing

Procedure in this case.

9. Statement of Ultimate Facts Alleged. It is the burden of each of the IOUs to prove that its claimed fuel and purchased power costs are reasonable and prudent and that it is entitled to charge rates (fuel charges) to recover such costs. Discovery and further analysis will show whether the IOUs' actual 2005 and projected 2006 costs are reasonable and prudent. A substantial number of the FRF's more than 10,000 members are retail customers of the IOUs, 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 customers of the IOUs, 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 120.57(1), 366.04(1), 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106.205, 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 retail customers of the IOUs, 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 customers of the IOUs, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over the IOUs' rates and the Commission's statutory mandate to ensure that the IOUs' 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 the IOUs' rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding the IOUs' rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in its Petition to Intervene.

#### **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 general rate case docket to protect its members' substantial interests in having the Commission set fuel and purchased power cost recovery charges for FPL, Progress, TECO,

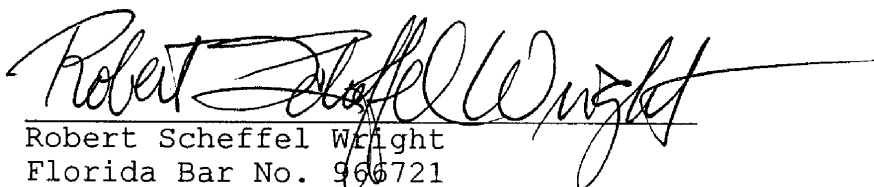


Gulf, and FPUC that are fair, just, reasonable, and not unduly discriminatory. The interests of the FRF's members that the FRF seeks to protect via its intervention and participation in this case are immediate and of the type to be protected by this proceeding.

**RELIEF REQUESTED**

**WHEREFORE**, the Florida Retail Federation respectfully requests the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene, 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 22nd day of September, 2005.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail or hand delivery (\*) on this 22nd day of September, 2005, on the following:

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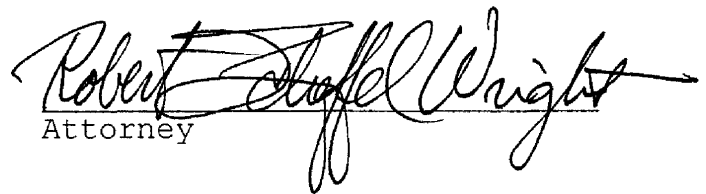
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