

**Matilda Sanders**

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**From:** Rhonda Dulgar [rhonda@landersandparsons.com]  
**Sent:** Friday, September 23, 2005 2:41 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic filing - Docket 050316-EI  
**Attachments:** FRFPetitiontoIntervene.sept23.doc

Electronic Filing

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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b. Docket No. 050316-EI

In re: Petition of Progress Energy Florida, Inc., for approval of integrated clean air regulatory compliance program for cost recovery through the environmental cost recovery clause.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 11 pages.

e. The document attached for electronic filing is The Florida Retail Federation's Petition to Intervene.

(see attached file: [FRFPetitiontoIntervene.sept23.doc](#))

Thank you for your attention and assistance in this matter.

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy )  
Florida, Inc., for Approval of )  
Integrated Clean Air Regulatory ) DOCKET NO. 050316-EI  
Compliance Program for Cost ) FILED: SEPTEMBER 23, 2005  
Recovery through the Environmental )  
Cost Recovery Clause )

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. 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 for approval of a new environmental compliance program involving more than \$1 billion in capital investment and, when fully in place, total annual revenue requirements well in excess of \$200 million per year. The federal rules that may ultimately require expenditures for the purposes contemplated by Progress have been

promulgated, but are subject to pending challenges lodged by an organization of which PEF is a member and by Florida Power & Light Company. No state rules have yet been promulgated. Progress "has confirmed that the scope of all activities and costs are subject to change as PEF completes ongoing studies and the [State Implementation Plan] goes through rulemaking." Staff Recommendation at 6. Additionally, Progress "emphasizes that the entire schedule is subject to change. Id. at 7. In view of these significant uncertainties surrounding Progress's request, the nature of the approval sought, and of the conditional approval recommended by the Commission Staff in their recommendation of September 8, 2005, is unclear. Regardless, the Commission has been asked to approve the programs, and any action on the proposed programs will, necessarily and directly, impact the FRF's members who are Progress customers by determining the Environmental Cost Recovery Clause ("ECRC") charges that Progress's customers must pay.

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 retail electric customers of PEF, whose substantial interests will be directly affected by the Commission's decisions regarding Progress's ECRC charges. 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 ECRC charges 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, including ECRC charges. 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

ECRC charges 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; 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. The FRF submits that the following issues of material fact will ultimately have to be decided relative to Progress's environmental compliance programs pursuant to the Clean Air Interstate Rule ("CAIR") and the Clean Air Mercury Rule ("CAMR"), assuming that those rules survive the pending challenges.

Issue: What, if any, requirements must PEF meet to comply with the CAIR and CAMR?

Issue: What is the most cost-effective compliance plan and strategy for PEF to comply with the requirements of the CAIR and the CAMR?

Issue: Are PEF's proposals the most cost-effective means of complying with the requirements of the CAIR and the CAMR?

Issue: Is each of the measures proposed by PEF, at each of its proposed affected power plants, consistent with the most cost-effective compliance plan and strategy available to PEF?

9. Disputed Legal Issues. The FRF submits that the following are appropriate legal issues to be included in the case.

Issue: What type of approval, if any, of PEF's proposed program is appropriate at this time?

**Issue:** What is the effect of any approval given by the Commission at this time?

**Issue:** If any approval is given at this time, what specific obligations should the Commission impose on Progress to ensure that it develops and implements the most cost-effective measures to comply with any applicable environmental regulatory requirements?

**Issue:** If any approval is given at this time, what point or points of entry will substantially affected persons and parties have to challenge specific, actual expenditures in the future?

10. Statement of Ultimate Facts Alleged. The requirements of the federal CAIR and CAMR rules are subject to challenge, and the ultimate requirements that will be imposed on Progress are unknown at this time. Progress itself admits that "its proposed timeline, activities and compliance costs are all subject to change." Staff Recommendation at 7. Any approval given by the Commission should be limited and should: (a) clearly impose an affirmative burden on PEF to demonstrate to the Commission in future evidentiary proceedings that its decisions regarding compliance measures were required and were the most cost-effective measures available, and (b) clearly afford all substantially affected persons and parties a clear point or

points of entry to address the necessity, reasonableness, and prudence of any actual PEF expenditures.

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 120.57(1), 366.04(1), 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

12. 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 regarding PEF's ECRC charges 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,

including its ECRC charges, 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 ECRC charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding PEF's ECRC 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 set ECRC charges 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 23rd day of September, 2005.

S/Robert Scheffel Wright  
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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 furnished by electronic mail and U.S. Mail on this 23rd day of September, 2005, on the following:

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