

**ORIGINAL**

**Matilda Sanders**

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**From:** Tim Perry [tperry@mac-law.com]  
**Sent:** Thursday, January 19, 2006 12:21 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 060038-EI  
**Attachments:** FIPUG's Petition to Intervene - 1-19-06.doc

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, [tperry@mac-law.com](mailto:tperry@mac-law.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060038-EI;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 5; and
5. The attached document is the The Florida Industrial Power Users Group's Petition to Intervene.

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 FPSC-COMMISSION CLERK

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's  
Petition for Issuance of a Storm Recovery  
Financing Order

Docket No: 060038-EI  
Filed: January 19, 2006

### THE FLORIDA INDUSTRIAL POWER USERS GROUP'S PETITION TO INTERVENE

Pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG), through its undersigned counsel, files its Petition to Intervene. In support thereof, FIPUG states:

1. The name and address of the affected agency is:

The Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

2. The name and address of the Petitioner is:

Florida Industrial Power Users Group  
c/o McWhirter, Reeves, & Davidson, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33602  
Telephone: (813) 224-0866  
Telecopier: (813) 221-1854

3. Copies of all pleadings, notices, and orders in this docket should be provided to:

John W. McWhirter, Jr.  
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4. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida, including a substantial number of members in FPL's service territory. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably priced electricity in order to compete in their respective markets.

5. Statement of Affected Interests. The Commission will decide in this docket whether it should approve Florida Power & Light Company's (FPL) petition for issuance of a storm recovery financing order in the amount of approximately \$1.7 billion; or in the alternative, whether it should approve FPL's request for the recovery of approximately the same amount via a surcharge or assessment. The amount of costs approved for recovery, as well as the mechanism used to recover such costs, will affect these FIPUG members' substantial interests by increasing their costs of electricity, thus affecting their production costs, their competitive posture, and their levels of employment.

6. FIPUG's interests are of the type that this proceeding is designed to protect. See, Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). The purpose of the proceeding is to determine the appropriate amount of storm damage costs that FPL may recover, to determine the proper level of FPL's storm damage reserve on a going forward basis, and to decide on the appropriate mechanism(s) for recovery of such amounts that the Commission approves. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that costs passed onto its members, if any, by FPL are appropriate. FIPUG has a long history of intervening to protect its members' interests in similar proceedings involving FPL and other utilities.

7. Disputed Issues of Material Fact. FPL states in its Petition that it "is not aware of any disputed issue of material fact."<sup>1</sup> However, FIPUG anticipates that, upon receiving and reviewing appropriate documentation regarding the costs at issue, there will be numerous disputed issues of

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<sup>1</sup> FPL's Petition at 11.

material fact which the Commission will be required to resolve through an evidentiary hearing pursuant to Chapter 120, Florida Statutes. Such disputed issues of material fact include, but are not limited to, the following:

- a. What is the appropriate amount of FPL's reasonably and prudently incurred storm related costs?
- b. What is the appropriate recovery period for FPL to recover its storm related costs?
- c. What is the appropriate method for FPL to recover its storm related costs?
- d. What is the appropriate method for allocating the recovery of FPL's storm related costs to the rate classes?
- e. What is the appropriate level of FPL's storm reserve?
- f. What is the appropriate period of time for FPL to replenish its storm reserve?
- g. What is the appropriate method for FPL to replenish its storm reserve?
- h. What is the appropriate method for allocating the replenishment of FPL's storm reserve to the rate classes?
- i. What is the appropriate treatment for income tax attributable to a storm surcharge?

FIPUG reserves its right to restate or rephrase the above issues, as well as raise additional issues pursuant to Commission rule, procedural order or CASR.

8. Statement of Ultimate Facts Alleged. FPL must prove that all costs charged to the storm reserve are appropriate for recovery from its ratepayers, that the recovery period for its storm related costs is appropriate, that the methodology for recovering those costs is appropriate, and that its request for replenishment of the storm reserve is appropriate. In addition, with respect to its request for a financing order, FPL must prove that the proposed structuring, expected pricing, and financing costs of storm-recovery bonds, if any are used, are reasonably expected to result in lower overall costs or would

avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs.

9. Statutes and Rules that Require the Relief Requested by FIPUG. Statutes and rules that require the relief requested by FIPUG include, but are not limited to, Sections 120.569, 120.57(1), 366.04(1), 366.041, 366.05(1), 366.06(1) and (2), 366.07, and 366.8260, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code

**WHEREFORE**, FIPUG requests that the Commission enter an order granting its petition to intervene.

s/ Timothy J. Perry  
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Attorneys for the Florida Industrial Power Users Group

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail and U.S. Mail this 19th day of January 2006, to the following:

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s/ Timothy J. Perry\_\_\_\_\_

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