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Matilda Sanders

From: Tim Perry [tperry@mac-law.com]
Sent: Thursday, March 02, 2006 11:37 AM
To: Filings@psc.state.fl.us
Cc: tperry@mac-law.com; JWM -- John McWhirter
Subject: Docket No. 060154-EI - FIPUG's Petition to Intervene
Attachments: FIPUG's Petition to Intervene - 3-2-06.doc

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060154-EI, In Re: Petition for issuance of storm recovery financing order pursuant to Section 366.8260 F.S. (2005) by Gulf Power Company;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 6; and
5. The attached document is The Florida Industrial Power Users Group's Petition to Intervene.

Timothy J. Perry
 McWhirter Reeves
 117 S. Gadsden St.
 Tallahassee, FL 32301
 (850) 222-2525
 (850) 222-5606 - Fax
tperry@mac-law.com

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FPSC-COMMISSION CLERK

In re: Gulf Power Company's Petition for a financing order pursuant to Section 366.8260 of the Florida Statutes (2005) relating to storm-recovery financing.

Docket No: 060154-EI
Filed: March 2, 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, hereby 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
Fax: (813) 221-1854

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

John W. McWhirter, Jr.
McWhirter, Reeves & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Fax: (813) 221-1854
E-mail: jmcwhirter@mac-law.com

Timothy J. Perry
McWhirter, Reeves & Davidson, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525
Fax: (850) 222-5606

E-mail: tperry@mac-law.com

4. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida, including a substantial number of members in Gulf Power Company's ("Gulf Power", "Gulf" or "the Company") 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 Gulf's petition for issuance of a storm recovery financing order pursuant to §366.8260, Florida Statutes to recover approximately \$137.8 million to be used to pay for storm related costs and to rebuild a storm reserve; or in the alternative, whether the Commission should approve Gulf's request for the recovery of approximately \$126.1 million via a surcharge or assessment, which will likewise be used to pay for storm related costs and to rebuild a storm reserve. The amount of costs approved for recovery, as well as the mechanism used to recover such costs, will affect 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 Gulf may recover from its customers, to determine the proper level of Gulf'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 Gulf are appropriate. FIPUG has a long history of intervening to protect its members' interests in similar proceedings involving Gulf and other utilities.

7. Disputed Issues of Material Fact. Gulf states in its Petition that it "is not aware of any disputed issues of material fact."¹ However, FIPUG anticipates that, upon receiving and reviewing appropriate documentation regarding the costs at issue, there will be numerous disputed issues of 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 Gulf's reasonably and prudently incurred storm related costs?
- b. What is the appropriate recovery period for Gulf to recover its storm related costs?
- c. What is the appropriate method for Gulf to recover its storm related costs?
- d. What is the appropriate method for allocating the recovery of Gulf's storm related costs to the rate classes?
- e. What is the appropriate level of Gulf's storm reserve?
- f. What is the appropriate period of time for Gulf to replenish its storm reserve?
- g. What is the appropriate method for Gulf to replenish its storm reserve?
- h. What is the appropriate method for allocating the replenishment of Gulf'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.

¹ Gulf's Petition at 3.

8. Statement of Ultimate Facts Alleged. Gulf must prove that all costs charged to the storm reserve are appropriate for recovery from its customers, 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, Gulf 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.

Respectfully submitted,

s/ Timothy J. Perry

John W. McWhirter

McWhirter, Reeves, & Davidson, P.A.

400 North Tampa Street, Suite 2450

Tampa, Florida 33602

Telephone: (813) 224-0866

Fax: (813) 221-1854

E-mail: jmcwhirter@mac-law.com

Timothy J. Perry

McWhirter, Reeves, & Davidson, P.A.

117 South Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 222-2525

Fax: (850) 222-5606

E-mail: tperry@mac-law.com

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 2nd day of March 2006, to the following:

Jennifer Brubaker
Mary Anne Helton
William Cochran Keating, IV
Roseanne Gervasi
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Jeffrey A. Stone
Russell Badders
Steven R. Griffin
Beggs & Lane
P.O. Box 12950
Pensacola, FL 32591

Harold A. McLean
Patty Christensen
Charles J. Beck
Joseph A. McGlothlin
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

s/ Timothy J. Perry
Timothy J. Perry
FL Bar No. 0496391