

ORIGINAL

Matilda Sanders

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Monday, November 20, 2006 4:38 PM
To: Filings@psc.state.fl.us
Cc: Dianne Triplett; J.M. Walls; Charles Beck; Patricia A. Christensen; Joseph A. McGlothlin; Harold Mclean; John W. McWhirter, Jr.; Timothy J. Perry; John T. Burnett; Paul Lewis, Jr.; Lisa Bennett; Michael Twomey; Schef Wright
Subject: Electronic Filing - PSC Docket 060642-EI
Attachments: FRF.PetitiontoIntervene.Nov20.doc

a. Person responsible for this electronic filing:

Robert Scheffel Wright
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b. Docket No. 060642-EI

Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption Bid Rule 25-22.082, F.A.C., and for cost recovery through the fuel clause, by Progress Energy Florida.

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: FRF.PetitiontoIntervene.Nov20.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
 Phone: 850-222-7206
 FAX: 850-561-6834

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for determination of need)
for expansion of Crystal River 3)
nuclear power plant, for exemption) DOCKET NO. 060642-EI
Bid Rule 25-22.082, F.A.C., and for)
for cost recovery through the fuel) FILED: NOVEMBER 20, 2006
clause, by Progress Energy Florida)
_____)

THE FLORIDA RETAIL FEDERATION'S PETITION TO INTERVENE

The Florida Retail Federation ("FRF"), pursuant to Chapter 120, Florida Statutes,¹ 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 ("Progress" or "PEF"). 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, the FRF states as follows.

1. The name, address, and telephone number of the Petitioner are as follows:

Florida Retail Federation
227 South Adams Street
Tallahassee, Florida 32301
Telephone (850) 222-4082
Telecopier (850) 226-4082.

¹ All references herein to the Florida Statutes are to the 2006 edition thereof.

DOCUMENT NUMBER-DATE

10651 NOV 20 06

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
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 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. Among the FRF's many authorized functions on behalf of its members is participation in government proceedings to protect its members' interests. Many - well over one thousand - of the FRF's members are retail electric customers of PEF; 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: (a) whether to approve PEF's request for an exemption from the Bid Rule, (b) whether to make a rate increase decision in a determination of need proceeding at least three years before any portion of the proposed new capacity is commercially operative, and (c) to concurrently determine whether to allow Progress to recover base rate expenses through

the Fuel Cost Recovery Clause at a time when PEF is subject to a base rate freeze.² These decisions will impact the cost of electricity to the FRF's members and other retail customers of PEF.

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 - well over one thousand - of its 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 power supply choices and regarding PEF's retail electric rates. Thus, the interests that the FRF seeks to protect are of sufficient immediacy to warrant

² Pursuant to the Stipulation entered into by PEF and several consumer intervenors in PSC Docket No. 050078-EI, which was PEF's 2005 general rate case proceeding, Progress committed - and the Commission accepted the Stipulation on the basis that - "PEF will not petition for any new surcharges, on an interim or permanent basis, to recover costs that are of a type that traditionally and historically would be, or are presently, recovered through base rates." PSC Order No. PSC-05-0945-S-EI at 12-13, also recited in paraphrase at page 2 of the same Order.

intervention, and the nature of its members' interests in having the Commission's protection against rates that are unjust, unfair, or unreasonable - here, rates that are legally inappropriate and that would likely violate of the Stipulation approved by the Commission in Order No. PSC-05-0945-S-EI - 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 - well over one thousand - 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 and protect its members' interests in a number of venues, including the Florida Public Service Commission. In this regard, the FRF was an intervenor in PEF's 2005 general rate case, and in PEF's 2004 storm cost recovery docket. Finally, the relief requested - intervention, proper and timely ratemaking treatment of future costs, 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 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. The Bid Rule plays an important role in ensuring that a public utility's selection of a capacity addition is the most cost-effective alternative available.³ The primary purpose of the proceeding, to determine the need for additional cost-effective generation, coincides with the FRF's substantial interests in ensuring that PEF develops and obtains the lowest-cost power supplies that are consistent with reliable electric service. However, the advance ratemaking determinations that PEF seeks:

- will adversely impact the FRF's members;

³ Rule 25-22.082(1), F.A.C.

- will likely violate the Stipulation entered into in PEF's 2005 general rate case (to the extent that it would allow PEF to recover investment in a power plant addition, which is obviously a base rate type cost, to be recovered through the Fuel Clause in advance of the expiration of the stipulation);
- constitutes an inappropriate and improper attempt to use the Fuel Cost Recovery Clause inappropriately to recover base rate type costs; and
- is, in all events, premature and fundamentally inappropriate in a determination of need proceeding.

9. Disputed Issues of Material Fact. The FRF is not opposed to the Commission granting the Bid Rule exemption requested by PEF if adequate protections are in place for consumers, namely the protections that the Bid Rule normally affords against a utility being able to recover, absent extraordinary circumstances, more than it represents the cost of its "Self-Build Option" generation addition to be in the need determination proceeding.⁴ However, the FRF agrees with the following issues that were identified by the Florida Industrial Power Users Group as needing to be addressed by the Commission in this proceeding:

- a. If the Commission grants the Bid Rule waiver requested by PEF, what procedures and provisions are necessary to ensure that the costs incurred

⁴ Rule 25-22.082(15), F.A.C.

in constructing PEF's Self-build Option are reasonable and prudent, and that PEF's retail customers are meaningfully protected against cost overruns as intended by the Bid Rule?

- b. Does PEF's proposal satisfy the statutory criteria for an affirmative determination of need pursuant to Section 403.519?
- c. What is the appropriate procedural avenue for PEF to seek recovery of its investment in the CR3 Uprate project, assuming that the project is constructed and brought into commercial operation by PEF as represented in its petition?
- d. Should the Commission sever and abate PEF's request for advance Commission approval of cost recovery through the Fuel Cost Recovery Clause?⁵

The FRF reserves all rights to restate or rephrase the above issues and to raise additional issues pursuant to applicable Commission rules, procedural orders, or other authority.

10. Statement of Ultimate Facts Alleged. To receive an exemption from the Bid Rule, PEF must meet the requirements set forth in Rule 25-22.082(18), F.A.C. When evaluating whether to grant the relief requested by PEF, the Commission should consider what procedures and provisions are necessary to ensure that the cost of the plant constructed by PEF is reasonable and prudent, and to provide protections to PEF's customers that are equivalent to those that the Bid Rule is intended to afford: namely, that the utility, after building its "Self-Build Option," may not recover costs in excess of what it represented to the Commission in the need determination proceeding except

⁵ The FRF concurs with and joins in the Motion to Sever and Abate filed by the Citizens of the State of Florida, through their Public Counsel, on November 20, 2006.

upon a showing that extraordinary circumstances caused such costs to be reasonably and prudently incurred. Further, the Commission should defer any ratemaking decision on the CR3 Uprate project until after the current rate freeze ends and the plant is commercially operable. Finally, the Commission should prohibit PEF's request to recover the capital investment-related costs of the CR3 Uprate project, which are base rate costs, through the Fuel Clause.

11. Statutes and Rules that Require the Relief Requested by FRF. Statutes and rules that require the relief requested by FRF include, but are not limited to, Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205 and 25-22.082, 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 - well over one thousand - of the FRF's 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 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 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 rates for Progress Energy Florida, Inc. that are fair, just, and reasonable. Many members of the FRF are PEF retail customers, and accordingly, their substantial interests are subject to determination in and will be affected by the Commission's decision herein whether to grant PEF an exemption from Rule 25-22.082, F.A.C., the Commission's decision whether to grant PEF's requested determination of need for its Crystal River 3 "Uprate" project, and any decisions that the Commission might make that would establish future ratemaking treatment of the costs associated with PEF's proposed project.

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 20th day of November, 2006.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Retail Federation's Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 20th day of November, 2006, to the following:

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