

Ruth Nettles

From: John W McWhirter [jmcwhirter@mac-law.com]
Sent: Friday, March 28, 2008 1:21 PM
To: Filings@psc.state.fl.us; Richard Bellak
Cc: Bryan Anderson , Esq; Wade Litchfield, Esq.; Joseph A. McGlothlin; J. R. Kelly; Cayce Hinton
Subject: FIPUG Petition to Intervene Dkt 080083-EI
Attachments: FIPUG 08328 petition to intervene.doc

1. John W. McWhirter, Jr., McWhirter & Davidson, P.A., 400 N. Tampa St. Tampa, FL 33602, jmcwhirter@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 080083-EI, In re: Petition for Declaratory Statement
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 3 ; and
5. The attached document is The Florida Industrial Power User Group's Petition to Intervene

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*Dme 3/28/08
R.V.N.*

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory Statement)
Regarding Applicability of Rule 25-6.0423,)
F.A.C., by Florida Power & Light Company.)
_____)

Docket No. 080083-EI

Dated: March 28, 2008

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 & Davidson, P.A.

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

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

4. FIPUG is an ad hoc association consisting of industrial users of electricity in the petitioning utility's service territory. The cost of electricity constitutes a significant portion of these customers overall costs of production. FIPUG participants require an adequate, reasonably priced and reliable supply of electricity in order to compete in their respective markets.

5. Statement of Affected Interests. FIPUG's interests are of the type that this proceeding is designed to protect. The Commission will decide in this docket whether it should render a declaratory

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statement that §366.93 *Florida Statutes* and Rule 25-6.0423 Florida Administrative Code enable Florida Power and Light Company to collect the **total estimated construction cost** for certain expenditures up to 10 years before a proposed nuclear plant is in use and useful service.

6. Disputed Issues. It is undisputed that §366.93 *Florida Statutes* designed to encourage fuel diversity through nuclear power plant construction is the most utility friendly legislation that has ever been enacted by the Florida legislature. The law authorizes the Commission to allow FPL to charge its customers the carrying costs on the utility's projected construction cost balance associated with a nuclear power plant long before the plant is in use and useful service.

It is disputed whether the Commission should liberally construe this legislation to permit FPL to collect the total construction costs of some estimated costs to be incurred on an as yet hypothetical construction site. The nature of the projected costs may be unknown to customers if FPL deems them to be trade secrets and discloses them to the Commission under the umbrella of confidentiality.

7. Statement of Ultimate Position. FIPUG takes the position that the proposed liberal construction of §366.93 *Florida Statutes* is unlawful.

8. 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, Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205 Florida Administrative Code.

9. Statement Explaining How the Facts Alleged By FIPUG 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 by an agency proceeding are entitled to intervene in the proceeding. FIPUG participants are retail customers of the petitioning utilities; their substantial interests are subject to determination in and will be affected by the Commission's decision. FIPUG is entitled to intervene herein.

WHEREFORE, FIPUG requests that the Commission enter an order granting its petition to intervene and further requests parties to provide the undersigned with all discovery filed in this docket.

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 the 28th day of March 2008 to the following:

<p>Cayce Hinton, Division of Economic Regulation Richard Bellak, Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, Florida 32399-0850</p>	<p>Office of the Public Counsel J.R. Kelly, Esquire Jos. A McGlothlin, Esquire c/o The Florida Legislature 111 West Madison Street Tallahassee, Florida 32399-1400</p>
<p>R. Wade Litchfield, Esquire Bryan Anderson, Esquire Florida Power & Light Company 700 Universe Boulevard Juno Beach, Florida 33408-0420</p>	<p>Michael B. Twomey Attorney for AARP Post Office Box 5256 Tallahassee, Florida 32314-5256</p>
	<p>s/ <u>John W. McWhirter, Jr</u> John W. McWhirter, Jr.. McWhirter & Davidson, P.A. 400 North Tampa Street, Suite 2450 Tampa, Florida 33602 Telephone: (813) 224-0866 Telecopier: (813) 221-1854 jmcwhirter@mac-law.com Attorneys for Florida Industrial Power Users Group</p>