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From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Wednesday, February 18, 2009 3:48 PM
To: James Brew; Charles Rehwinkel; Jon Moyle; Vicki Kaufman; J.R. Kelly; John T. Burnett; Paul Lewis, Jr.; Erik Saylor; Filings@psc.state.fl.us; Jean Hartman; Lisa Bennett; Martha Brown; Schef Wright
Subject: Electronic Filing - Docket 090079-EI
Attachments: FRF.Petition to Intervene.2-18-09.doc

a. Person responsible for this electronic filing:

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b. 090079-EI

In Re: Petition for Increase in Rates by Progress Energy Florida, Inc.

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 Petition to Intervene and Request for Hearing of the Florida Retail Federation.

(see attached file: FRF.Petition to Intervene.2-18-09.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
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02/18/09 kmf
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Increase in Rates)
by Progress Energy Florida, Inc.) DOCKET NO. 090079-EI
_____) FILED: FEBRUARY 18, 2009

PETITION TO INTERVENE AND REQUEST FOR HEARING
OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation ("FRF"), pursuant to Chapters 120 and 366, Florida Statutes,¹ and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. The FRF also petitions the Florida Public Service Commission to conduct a hearing in this case in accordance with Chapters 120 and 366, Florida Statutes. As it did in 2002 and 2005, the FRF stands fully ready to participate in good faith in any negotiations toward resolving this case via another stipulation and settlement.

In summary, the FRF is an established association with more than 9,000 members in Florida, many of whom are retail customers of PEF. The FRF respectfully petitions for intervention to protect its members' interests in having the Commission determine the fair, just, and reasonable rates to be charged by PEF beginning January 1, 2010, i.e., upon the expiration of the current Stipulation and Settlement, In Re: Petition for Rate

¹ All references herein to the Florida Statutes are to the 2008 edition thereof.

Increase by Progress Energy Florida, Inc., FPSC Docket No. 050078-EI, Order No. PSC-05-0945-S-EI (September 28, 2005), and in having the Commission take such other action to protect the interests of the FRF's members and of all of PEF's customers as the Commission may deem appropriate. 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 Florida Retail Federation 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.

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 9,000 members in Florida. Many of the FRF's members are retail electric customers of Progress Energy Florida; 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 whether to approve PEF's request for a general rate increase. Progress initiated this docket by filing a Test Year Notification on February 12, 2009. PEF's Test Year Notification indicated that PEF intends to file its Minimum Filing Requirements and testimony on or about March 20, 2009. (The FRF is contemporaneously filing its response in opposition to PEF's petition for an emergency waiver of the Commission's Test Year Notification rule.) PEF's Test Year Notification indicated that PEF's requested rate increase will be in the range of \$475 million to \$550 million per year. The Commission will necessarily have to decide whether any rate increases are justified, and if so, the Commission will also have to approve

the rates and charges that would enable PEF to recover any authorized increase in PEF's base rate revenues. As the representative of its many members who are PEF retail customers, the Florida Retail Federation's and its members' substantial interests will be affected by any action that the Commission takes in this docket.

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 of its more than 9,000 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 retail electric rates. 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 set rates for PEF

that are fair, just, reasonable, and not unduly discriminatory are exactly the interests that this proceeding is designed to protect. This is a general rate case, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining PEF's rates.

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 9,000 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 its members' interests in a

number of venues, including the Florida Public Service Commission: indeed, the FRF was an intervenor in PEF's (then Florida Power Corporation) general rate case in 2002 and a signatory to the Stipulation and Settlement that resolved the issues in that docket. The FRF was also an intervenor in PEF's 2005 general rate case and a signatory to the Stipulation and Settlement that resolved that docket. Finally, the relief requested -- intervention and the lowest rates consistent with applicable laws and rules -- 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. Disputed Issues of Material Fact. The FRF believes that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the issues listed below. Naturally, at this very early point in this docket, the issues stated below are broad, general issues, and the FRF expects that numerous additional, specific issues will be identified and developed as this docket progresses.

Issue: What are the appropriate jurisdictional values of PEF's Plant in Service, Accumulated Depreciation, and Rate Base for setting PEF's rates to be effective as of

January 1, 2010?

Issue: What are the appropriate jurisdictional values of PEF's operation and maintenance expenses for setting PEF's rates in this case?

Issue: What is the appropriate capital structure for PEF for the purpose of setting PEF's rates in this case?

Issue: What is the appropriate rate of return on equity for PEF for the purpose of setting PEF's rates in this case?

Issue: What are the appropriate cost rates for other sources of capital in PEF's capital structure?

Issue: How should PEF's costs of providing retail electric service be allocated to PEF's retail customer classes?

Issue: What are the appropriate rates to be charged by PEF for its services to each customer class?

Issue: What is the appropriate amount to be included in PEF's base rates for storm restoration accrual?

The FRF reserves all rights to raise additional issues in accordance with the Commission's rules and the anticipated Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. It is PEF's burden to prove that it is entitled to any rate relief, and to meet that burden, PEF must prove that its existing rates and charges are not fair, just, and reasonable. It has been four

years since PEF's last general rate proceeding was resolved by the current Stipulation and Settlement, which expires at the end of this year, and it has been many years since the Commission last actually decided disputed issues in a general rate case for PEF's predecessor, Florida Power Corporation. A substantial number of the FRF's more than 9,000 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 in this docket. Accordingly, as the representative association of its members who are PEF customers, the FRF is entitled to intervene herein.

10. 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 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By the Florida Retail Federation Entitle the FRF to the Relief Requested. 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 9,000 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 in this docket. Accordingly, as the representative association of its 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 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 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 in its Petition to Intervene.

CONCLUSION

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, seeks to intervene in this general rate case docket to protect its members' substantial interests in having the Commission set rates for Progress Energy Florida, Inc. that are fair, just, reasonable, and not unduly discriminatory. The interests of the FRF's 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, and accordingly, the FRF is entitled to intervene in this docket.

RELIEF REQUESTED

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 1 above.

Respectfully submitted this 18th day of February, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Intervene and Request for Hearing of the Florida Retail Federation has been furnished by electronic Mail this 18th day of February, 2009, to the following:

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