

Office of Commission Clerk Official Filing

Ruth Nettles

From: Cecilia Bradley [Cecilia.Bradley@myfloridalegal.com]
 Sent: Monday, March 23, 2009 5:55 PM
 To: Filings@psc.state.fl.us
 Cc: Lewis Jr, Paul; Glenn, Alex; kelly.jr@leg.state.fl.us; miketwomey@talstar.com; jmcwhirter@mac-law.com; swright@yvlaw.net; jbrew@bbrslaw.com; MCGLOTHLIN.JOSEPH@leg.state.fl.us; Lisa Bennett; Keino Young; Triplett, Dianne; Walls, J. Michael
 Subject: Attorney General's Motion to Intervene, Docket No. 070703-EI
 Attachments: intervene AG.doc; intervene AG.pdf



intervene AG.doc (78 KB) intervene AG.pdf (73 KB)

Attached is the Attorney General's Motion to Intervene for filing in Docket No. 070703-EI. Thank you for your consideration of this matter.

(See attached file: intervene AG.doc) (See attached file: intervene AG.pdf)

Cecilia Bradley
 Senior Assistant Attorney General
 General Civil/Tort Litigation
 Office of the Attorney General
 Tel.: (850) 414-3300
 Fax: (850) 488-4872

*Done
 3/24/09
 R.V.N.*

E-mail:cecilia.bradley@myfloridalegal.com

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

DOCUMENT NUMBER-DATE

02563 MAR 24 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of coal costs for
Progress Energy Florida's Crystal
River Units 4 and 5 for 2006
and 2007.**

DOCKET NO. 070703-EI

FILED: March 23, 2009

ATTORNEY GENERAL McCOLLUM'S MOTION TO INTERVENE

BILL McCOLLUM, Attorney General, State of Florida, petitions the Florida Public Service Commission to enter an order granting leave to the Attorney General to intervene in this Docket and states:

1. Article IV, Section 4 of the Florida Constitution provides that the Attorney General is the chief state legal officer. The courts have long recognized that the Attorney General, as chief state legal officer, is authorized to intervene in all actions affecting the citizens of Florida. *See State ex rel. Landis v. S. H. Kress & Co.*, 155 So. 823 (Fla. 1934) (Court upheld the power of the Attorney General to test by writ of quo warranto the right of a foreign corporation to operate in Florida); *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 893 (Fla. 1972) ("Although the P.S.C. by virtue of Fla. Stat. § 366.01, F.S.A., exercises the police power of the State for the protection of the public welfare and by its statutorily authorized Rule 25-1.24, the Legal Department represents the general public interest in all rate cases, there is no statute which prohibits the Attorney General from representing the State of Florida as a consumer, and offering such evidence and argument as will benefit its citizens. Generally speaking, the Attorney General is Chief Counsel for the State which in final analysis is the people."); *State ex rel. Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973) (where trial court finds statute unconstitutional, it is proper for Attorney General to appear on appeal to defend statute even though he was not a party to action before the trial court and the State of Florida, through the

DOCUMENT NUMBER-DATE

02563 MAR 24 8

FPSC-COMMISSION CLERK

Attorney General, is proper party to any action in which the constitutionality of any general statute is raised).

2. In *Kress, supra*, the Court recognized the authority of the Attorney General to intervene and bring actions affecting the state and held:

The office of Attorney General has existed both in this country and in England for a great while. The office is vested by the common law with a great variety of duties in the administration of the government. It has been asserted that the duties of such an office are so numerous and varied that it has not been the policy of the Legislature of the States to specifically enumerate them; that a grant to the office of some powers by statute does not deprive the Attorney General of those belonging to the office under the common law. The Attorney General has the power and it is his duty among the many devolving upon him by the common law to prosecute all actions necessary for the protection and defense of the property and revenues of the State; to represent the state in all criminal cases before the appellate court; by proper proceedings to revoke and annul grants made by the State improperly or when forfeited by the grantee; by writ of quo warranto to determine the right of any one who claims or usurps any office, and to vacate the charter or annul the existence of a corporation for violations of its charter or for omitting to exercise its corporate powers; to enforce trusts and prevent public nuisances and abuse of trust powers. As the chief law officer of the State, it is his duty, in the absence of express legislative restrictions to the contrary, to exercise all such power and authority as public interests may require from time to time.

155 So. at 827.

3. This language recognizes the authority of the Attorney General to intervene in actions such as the instant one. In this action, Progress Energy Florida (PEF) has overcharged its customers \$61 million dollars by failing to use the most economical fuel source at its Crystal River Units 4 and 5 between 2006 and 2007, while passing along the charges for the design feature that would have allowed PEF to burn the less expensive fuel source.

4. Unnecessary charges are of concern to the public and require intervention by the Attorney General.

Wherefore, Bill McCollum, Attorney General, requests that he be allowed to intervene in the instant action.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

s/ Cecilia Bradley
CECILIA BRADLEY
Senior Assistant Attorney General
Florida Bar No. 0363790

Office of the Attorney General
The Capitol - PL01
Tallahassee, FL 32399-1050
(850) 414-3300
Fax: (850) 488-4872

DOCKET NO. 070703-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Attorney General Bill McCollum's Motion to Intervene has been furnished by electronic mail and U.S. Mail on this 23rd day of March, 2009, to the following:

Progress Energy Florida, Inc.
Mr. Paul Lewis, Jr.
106 East College Avenue, Suite 800
Tallahassee, FL 32301-7740

R. Alexander Glenn
John T. Burnett
Progress Energy Service Company, LLC
P.O. Box 14042
Saint Petersburg, FL 33733-4042

James Michael Walls
Dianne M. Triplett
Carlton Fields, P.A.
P.O. Box 3239
Tampa, FL 33607-5736

Keino Young
Lisa Bennett
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

JR Kelly
Public Counsel
Joseph A. McGlothlin
Associate Public Counsel
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400

Robert Scheffel Wright
Young Van Assenderp, P.A.
225 S. Adams St., Suite 200
Tallahassee, FL 32301

Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-5256

John McWhirter, Jr.
McWhirter, Reeves Law Firm
P.O. Box 3350
Tampa, FL 33601-3350

James W. Brew
Brickfield Law Firm
1025 Thomas Jefferson St., NW
Eighth Floor, West Tower
Washington, DC 20007

/s/ Cecilia Bradley
Cecilia Bradley
Senior Assistant Attorney General