

RECEIVED-FPSC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

09 AUG 10 PM 1:17

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

090079

COMMISSION

DOCKET NO. 090079-1

FILED: August 10, 2009

PETITION TO INTERVENE OF THE FLORIDA A.F.F.I.R.M.

The Florida Association For Fairness In Rate Making ("AFFIRM"), pursuant to sections 120.569 and 120.57, and Chapter 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. In support of this petition, AFFIRM states:

- 1. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

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

Association For Fairness In Rate Making
Attn: Dan Moore
316 Maxwell Road, Suite 400,
Alpharetta, Georgia 30009.
Telephone (770) 751-7133
Telecopier (770) 751-1728
dmoore@esgconsult.com

COM _____
ECR _____
GCL 2
OPC _____
RCP 2
SSC 2
SGA 2
ADM _____
CLK _____

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

Dme
8/10/09
R-v.21

3. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Stephanie Alexander
Tripp Scott, P.A.
200 West College Avenue, Suite 216
Tallahassee, Florida 32301
Telephone: (850) 906-9100
Facsimile: (850) 906-9104
sda@trippscott.com

4. Notice of docket. Petitioner received notice of this docket by a review of the Florida Public Service Commission's website.

5. Statement of Substantial Interests. AFFIRM is a coalition of quick-serve restaurants that have substantially similar electrical usage characteristics. The Members of AFFIRM are the corporations and the corporations' franchisees that own and operate over 500 business locations served by Progress Energy Florida ("PEF") under the following brand names: Waffle House, Wendy's, Arby's, and YUM! Brands, doing business as Pizza Hut, Kentucky Fried Chicken, Taco Bell, Long John Silver's, and A&W. These members are thus commercial electric customers of PEF and purchase electricity from PEF pursuant to several different PEF rate schedules. AFFIRM's members require adequate, reasonably priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.

6. In this docket, the Florida Public Service Commission will decide whether to approve the request of Progress Energy Florida (PEF) for a general rate increase in the amount of \$475 million to \$550 million per year. The amount of increase approved, if any, as well as other rate case issues (such as cost of service and corresponding rate structure) will affect AFFIRM's

members by increasing their costs of electricity and their treatment as compared to other customers. Thus, the substantial interests of AFFIRM's members will be affected by the determinations made in this docket.

7. AFFIRM'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 it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. *See 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). The purpose of this proceeding is to determine the merits of PEF's rate case; the substantial interests of AFFIRM is to ensure that the rates its members pay are fair, just and reasonable. Thus, the protection of AFFIRM's substantial interests coincides with the purpose of the proceeding.

8. Associational Standing. AFFIRM has standing as an association to represent its members' substantial interests. All or most of its members will be substantially affected by the Florida Public Service Commission's decisions; the association was formed for the purpose of protecting its members interests in rate proceedings; and the relief requested (intervention) is of a type appropriate for an association to obtain on behalf of its members. *See Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982).

9. Disputed Issues of Material Fact. In addition to the issues already identified by existing parties in this docket, AFFIRM states that the disputed issues of material fact include, but are not limited to, the following:

Issue: What are the appropriate commercial time of use rates to be charged by PEF?

Issue: What is the appropriate cost of service study methodology upon which PEF's rate be based?

AFFIRM reserves all rights to raise additional issues in accordance with the Florida Public Service Commission's rules and the Order Establishing Procedure in this case.

10. Disputed Legal Issues. In addition to the legal issues already identified, disputed legal issues include, but are not limited to, the following:

Issue: Has PEF carried its burden of proof as to the legality and appropriateness of the proposed commercial time of use rates?

Issue: Has PEF carried its burden of proof as to the legality and appropriateness of the proposed cost of service methodology based on 12 CP and 50% AD allocation for fixed production capacity costs, which departs from historical methodology based on 12 CP and 1/13th AD?

11. Statement of Ultimate Facts Alleged. Ultimate facts include, but are not limited to, the following:

A new commercial time of use rate should be developed and implemented under which the rate charged by PEF (i) varies during different time periods and reflects the variance, if any, in the utility's cost of generation and purchasing electricity at the wholesale level; and (ii) enables the electric consumer to manage energy use and cost through advanced metering and communications technology. Moreover, PEF should be required to develop new rates based on a cost of service methodology based on 12 CP and 1/13th AD allocation for fixed production capacity costs.

12. Statutes and Rules That Entitle AFFIRM to Relief. The applicable statutes and

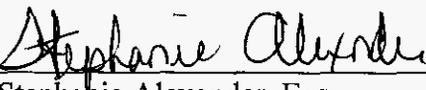
rules that entitle AFFIRM to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

13. Relief. AFFIRM requests that it be permitted to intervene as a full party in this docket.

WHEREFORE, AFFIRM respectfully requests the Florida Public Service Commission enter an order granting this Petition to Intervene and allowing AFFIRM to participate as a full party in this docket. AFFIRM also respectfully requests that the order granting intervention direct all parties to this proceedings to serve copies of all pleadings, notices, and other documents upon AFFIRM's representative as indicated in Paragraph 2 above, as well as upon the undersigned.

Respectfully submitted this 10th day of August 2009.

Respectfully submitted,

By: 
Stephanie Alexander, Esq.

TRIPP SCOTT, PA
Attorneys for Intervenor
200 West College Avenue, Suite 216
Tallahassee, Florida 32301
Telephone: (850) 906-9100
Facsimile: (850) 906-9104
email: sda@trippscott.com

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and/or U.S. Mail, on this 10th day of August, 2009.

Katherine Fleming, Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

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

Carlton Fields Law Firm
J. Michael Walls/Diane M. Tripplett
Post Office Box 3239
Tampa, FL 33601-3239
Email: mwalls@carltonfields.com

Federal Executive Agencies
Audrey Van Dyke
c/o Naval Facilities Engineering Comma
720 Kennon Street, S.E. Building 36, R
Washington Navy Yard, DC 20374-5065
Email: Audrey.VanDyke@navy.mil

Office of Attorney General
Bill McCollum/Cecilia Bradley
The Capitol - PL01
Tallahassee, FL 32399-1050
Email: cecilia.bradley@myfloridalegal.com

J.R Kelly/Charles Rehwinkel
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

John Burnett
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733

Vicki Gordon Kaufman
Jon C. Moyle, Jr.
Keefe, Anchors, Gordon & Moyle
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Federal Executive Agencies

Kay Davoodi, Director, Utility Rates a
c/o Naval Facilities Engineering Comma
1322 Patterson Avenue SE
Washington Navy Yard, DC 20374-5065
Email: Khojasteh.Davoodi@navy.mil

Florida Retail Federation

Robert Scheffel Wright
c/o Young Law Firm
225 South Adams Street, Suite 200
Tallahassee, FL 32301
Email: swright@yvlaw.net

PCS Phosphate - White Springs

James W. Brew/F. Alvin Taylor
c/o Brickfield Law Firm
1025 Thomas Jefferson St., NW, 8th Flo
Washington, DC 20007
Email: jbrew@bbrslaw.com

Richard D. Melson
705 Piedmont Drive
Tallahassee, FL 32312
Phone: 850-894-1351
Email: rick@rmelsonlaw.com

/Stephanie Alexander
Attorney