

Marguerite McLean

090372-EQ

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Friday, August 06, 2010 5:01 PM
To: rjensen@fbenergy.com; rlincoln@icardmerrill.com; john.burnett@pgnmail.com; paul.lewisjr@pgnmail.com; Filings@psc.state.fl.us; Jean Hartman; Jennifer Brubaker; Schef Wright
Subject: Electronic Filing - Docket 090372-EQ
Attachments: 090372.FBE.Motion2ExpediteDiscovery.8-6-10.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

b. 090372-EQ

In Re: Petition for Approval of Negotiated Purchase Power Contract with FB Energy, LLC by Progress Energy Florida.

c. Document being filed on behalf of Florida Biomass Energy, LLC (FB Energy).

d. There are a total of 5 pages.

e. The document attached for electronic filing is Florida Biomass Energy, LLC's Unopposed Motion to Expedite Discovery.

(see attached file: 090372.FBE.Motion2ExpediteDiscovery.8-6-10.pdf)

Thank you for your attention and assistance in this matter.

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

8/9/2010

DOCUMENT NUMBER DATE

06560 AUG -9 e

FPSC-COMMISSION OFFICE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of
Negotiated Purchase Power
Contract with FB Energy, LLC by
Progress Energy Florida.

DOCKET NO. 090372-EQ

SERVED: August 6, 2010

**FLORIDA BIOMASS ENERGY, LLC'S UNOPPOSED
MOTION TO EXPEDITE DISCOVERY**

FLORIDA BIOMASS ENERGY, LLC ("FB Energy"), pursuant to Rule 28-106.204, Florida Administrative Code ("F.A.C."), hereby respectfully moves the Commission to enter an order requiring expedited responses to its discovery propounded on this date to U.S. Funding Group, LLC ("Funding Group"). In summary, the interrogatories, document production requests, and requests for admissions all address the simple, fundamental question as to whether Funding Group was a retail customer of Progress Energy Florida ("PEF") on January 20, 2010, which is the date on which Funding Group filed its initial petition protesting the Commission's Proposed Agency Action Order No. PSC-09-0852-PAA-EQ ("PAA Order Approving Contract"). Accordingly, FB Energy believes that Funding Group should be able to answer these discovery requests quickly and easily, and FB Energy further asserts that prompt responses, and prompt subsequent resolution of the issue of Funding Group's standing, will promote the efficient and speedy administration of justice in this proceeding. FB Energy therefore moves the Commission to enter

its order requiring Funding Group to respond to FB Energy's discovery requests by Monday, August 23, 2010.

BACKGROUND

The Commission issued the PAA Order Approving Contract on December 30, 2009. Funding Group filed its initial petition protesting that Order on January 20, 2010. FB Energy moved to dismiss, and the Commission granted that motion by its Order No. PSC-10-0256-FOF-EQ ("Order Dismissing Initial Petition"). After hearing discussion on Funding Group's motion for reconsideration of the Order Dismissing Initial Petition, the Commission granted Funding Group leave to amend its initial petition, which Funding Group did by filing its Petition "Amended Petition Protesting Notice of Proposed Agency Action Order Approving Negotiated Purchase Power Contract" ("Amended Petition") on July 21, 2010.

MOTION FOR EXPEDITED DISCOVERY

Consistent with the Commission's ruling in its Order No. PSC-10-0256-FOF-EQ, in which the Commission dismissed Funding Group's initial petition protesting the Commission's PAA Order Approving Contract, FB Energy believes that Funding Group lacks standing to intervene in this proceeding because it was not a customer of Progress Energy Florida when it filed its petition. Accordingly, FB Energy will file, no later than Tuesday, August 10, 2010, a motion to dismiss Funding Group's Amended Petition for lack of standing. On information and belief, and after diligent inquiry of PEF, FB Energy believes that Funding Group

lacks standing because it is not a retail electric customer of PEF as alleged in its Amended Petition, and further that Funding Group was not a customer of PEF on January 20, 2010, when it filed its initial petition. FB Energy also believes that the other allegations made by Funding Group are either outside the scope of this proceeding or too speculative to establish injury in fact, or both, such that Funding Group's other allegations do not afford a basis for its standing to intervene. However, one certain allegation made by Funding Group in its Amended Petition - that "Funding Group's property in Wildwood is served by Progress Energy," Amended Petition at 2 - might lead the Commission to believe otherwise, or might be construed so as to create confusion as to the underlying facts, and FB Energy's discovery requests are directed at confirming the underlying facts relevant to Funding Group's status for the purpose to enabling the Commission to make a fully informed decision on FB Energy's soon-to-be-filed motion to dismiss Funding Group's Amended Petition.

The discovery requests go solely to the issue of whether Funding Group is a customer of PEF as suggested in its Amended Petition, and to whether Funding Group was a customer of PEF on January 20, 2010, when it filed its initial petition protesting the Commission's PAA Order Approving Contract. Accordingly, they are susceptible to brief, simple, and quick responses, and granting this Motion to Expedite Discovery will not prejudice or

unduly burden Funding Group. Granting the Motion will facilitate the speedy and efficient administration of justice by enabling the Commission to make a fully informed decision on the facts relating to Funding Group's claims as to its standing.

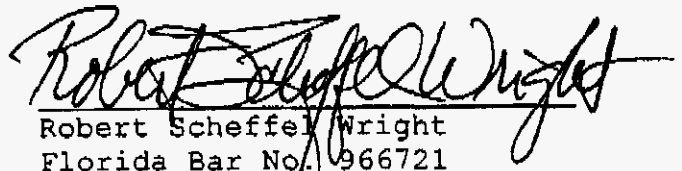
STATEMENT PURSUANT TO RULE 28-206.204(3), F.A.C.

Pursuant to Rule 28-106.204(3), F.A.C., the undersigned avers that he has communicated with counsel for Progress Energy Florida and is authorized to represent that Progress does not object to this Motion to Expedite Discovery. The undersigned has also spoken with counsel for the Commission Staff and is authorized to represent that the Staff take no position with respect to the Motion. The undersigned further avers that he has spoken with counsel for Funding Group and is authorized to represent that Funding Group does not object to the Motion.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, the Commission should grant this Motion to Expedite Discovery by issuing its order granting the Motion and requiring Funding Group to respond to FB Energy's discovery requests, which are being served electronically contemporaneously with this Motion, by August 23, 2010.

RESPECTFULLY SUBMITTED this 6th day of August, 2010.



Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
Young van Assenderp, P.A.
225 South Adams Street
Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Attorneys for FB Energy, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail this 6th day of August, 2010, to the following:

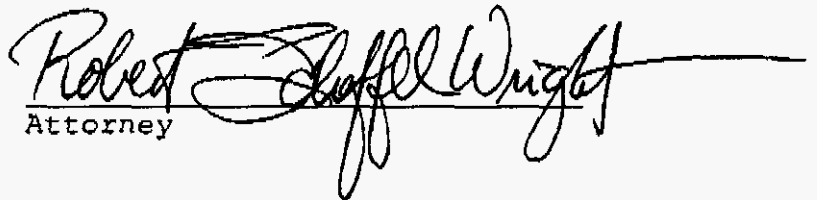
Jean Hartman/Jennifer Brubaker
Florida Public Service Commission
Office of the Public Counsel
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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

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

Stacy L. Dillard-Spahn
Robert K. Lincoln
Icard, Merrill, Cullis, Timm,
Furen & Ginsburg, P.A.
2033 Main Street, Suite 600
Sarasota, Florida 34237

Richard Jensen
FB Energy, LLC
100 Third Avenue West
Bradenton, Florida 34205


Attorney