

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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COMMISSION  
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In re: Fuel and purchased power cost  
recovery clause with generating  
performance incentive factor.

DOCKET NO. 1000017E1

FILED: September 22, 2010

**PETITION TO INTERVENE OF AFFIRM**

The Florida Association For Fairness In Rate Making ("AFFIRM"), pursuant to sections 120.569 and 120.57, and Chapter 366, Florida Statutes,<sup>1</sup> 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](mailto:dmoore@esgconsult.com)

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

Patrick K. Wiggins  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
Telephone: (850) 850-212-1599  
Facsimile: (850) 906-9104  
[wigglaw@gmail.com](mailto:wigglaw@gmail.com)

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

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ECR | \_\_\_\_\_  
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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 utilities who are parties in this docket, 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 the utilities and purchase electricity from utilities pursuant to several different rate schedules that will be affected in this proceeding. AFFIRM's members require adequate, reasonably priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.
6. AFFIRM'S substantial interests are of sufficient immediacy to entitle it to participate as a party 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 ensure that utility rates that are fair, just and reasonable by determining whether certain claimed amounts may be recovered by the utilities through their retail rates. AFFIRM has a substantial interest in ensuring that the utility rates its members pay are fair, just and reasonable. Thus, AFFIRM's participation as a party coincides with the purpose of the proceeding.
7. 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 proceedings related to rates; 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).

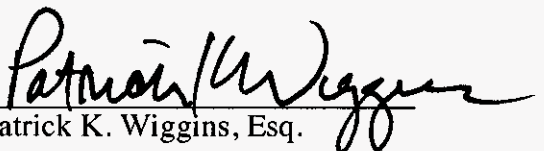
8. Disputed Issues. Appendix A to Order on Prehearing Procedure, (Order No. PSC-10-0154-PCO-EI), provides a list of tentative issues. In addition, identifies the following disputed issue: Whether the time-of-use rate components of the Fuel Cost Recovery for the utilities are appropriately structured and determined? 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.
9. Statement of Ultimate Facts Alleged. AFFIRM Members are economically disadvantaged in the purchasing of electric service from the utilities because the time-of-use rate components of the Fuel Cost Recovery are structured and determined in an inappropriate manner.
10. 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), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.
11. 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 22nd day of September 2010.

Respectfully submitted,

By:   
Patrick K. Wiggins, Esq.

Law Offices of  
Patrick K. Wiggins, P.A.  
Attorneys for AFFIRM  
Post Office Drawer 1657  
Tallahassee, Florida 32302  
Telephone: (850) 212-1599  
Facsimile: (850) 906-9104  
email: wigglaw@gmail.com

**CERTIFICATE OF SERVICE**

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 22nd day of September, 2010.

Akerman Law Firm Keating)  
Beth Keating  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32301

Florida Power & Light Company  
John T. Butler/Ken Hoffman  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Ausley Law Firm  
James D. Beasley/J. Jeffrey Wahlen  
Post Office Box 391  
Tallahassee, FL 32302

Florida Public Utilities Company  
Mr. George Bachman/Cheryl Martin  
P. O. Box 3395  
West Palm Beach, FL 33402-3395

Beggs & Lane Law Firm  
Jeffrey A. Stone/Russell A. Badders/St  
P.O. Box 12950  
Pensacola, FL 32591-2950

Florida Retail Federation Young)  
Robert Scheffel Wright/John T. LaVia,  
c/o Young Law Firm  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

Brickfield Law Firm  
James W. Brew/F. Alvin Taylor  
Eighth Floor, West Tower  
1025 Thomas Jefferson Street, NW  
Washington, DC 20007

Gulf Power Company  
Ms. Susan D. Ritenour  
One Energy Place  
Pensacola, FL 32520-0780

Federal Executive Agencies  
Shayla L. McNeill, Capt, USAF  
c/o AFLSA/JACL-ULT  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5319

Keefe Law Firm  
Vicki Gordon Kaufman/Jon C. Moyle, Jr.  
118 North Gadsden Street  
Tallahassee, FL 32301

Florida Industrial Power Users Group  
(McWhirter10)  
John W. McWhirter, Jr.  
c/o McWhirter Law Firm  
PO Box 3350  
Tampa, FL 33601

Office of Attorney General  
Bill McCollum/Cecilia Bradley  
The Capitol - PL01  
Tallahassee, FL 32399-1050

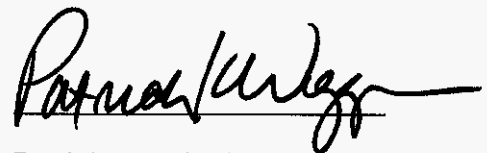
Office of Public Counsel  
J.R. Kelly/Patricia Christensen  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400

Tampa Electric Company  
Paula K. Brown  
P. O. Box 111  
Tampa, FL 33601-0111

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

White Springs Agricultural Chemicals, Inc.  
Randy B. Miller  
Post Office Box 300  
White Springs, FL 32096

Progress Energy Service Company, LLC  
John T. Burnett  
P.O. Box 14042  
St. Petersburg, FL 33733-4042



Patrick K. Wiggins