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Sent: Friday, August 12, 2011 5:02 PM
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Subject: Electronic Filing - Docket 100437-EI
Attachments: 100437.FRF.Petition2Intervene.8-12-11.pdf

a. Person responsible for this electronic filing:

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b. 100437-EI

In Re: Examination of the Outage and Replacement Fuel/Power Costs Associated with the CR3 Steam Generator Replacement Project by Progress Energy Florida, Inc.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 12 pages.

e. The document attached for electronic filing is Petition to Intervene of the Florida Retail Federation.

(see attached file: 100437.FRF.Petition2Intervene.8-12-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
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8/15/2011

DOCUMENT NUMBER-DATE
05735 AUG 12 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Examination of the Outage)
and Replacement Fuel/Power Costs)
Associated with the CR3 Steam)
Generator Replacement Project by)
Progress Energy Florida, Inc.)

DOCKET NO. 100437-EI
FILED: AUGUST 12, 2011

PETITION TO INTERVENE 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. In summary, the FRF is an established association with more than 9,000 members in Florida, many of whom are retail customers of Progress Energy Florida, Inc. ("PEF" or "Progress"). 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 for electric service, in light of PEF's actions relating to the steam generator replacement project at PEF's Crystal River 3 nuclear generating unit ("CR3") and relating to the consequences of PEF's actions on replacement fuel and power costs, as well as any repair costs, incurred by PEF as a result of the extended outage of CR3. The Commission's actions herein will determine the substantial interests of the many members of the FRF who are PEF customers by determining their

¹ All references herein to the Florida Statutes are to the 2010 edition thereof.

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costs for electric service, 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.

Statement of the FRF's and Its Members' Affected Interests

4. The Florida Retail Federation is an association, established in 1937, 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. In Order No. PSC-10-0632-PSC-EI, the Commission established this docket, as a spin-off from the Fuel Cost Recovery Clause docket, to evaluate the "prudence and reasonableness of PEF's actions concerning the delamination" of the walls of the CR3 reactor containment building. In re: Fuel and Purchased Power Cost Recovery Clause, Docket No. 100001-EI, Order Granting Progress Energy Florida, Inc.'s Motion to Establish Separate Docket at 1 (October 25, 2010). By logical and rational extension, the FRF expects that this docket will encompass review of the reasonableness and prudence of PEF's actions, as well as costs incurred, with respect to the 2009 delamination and subsequent events, including the further delamination that was discovered in March 2011.

5. Thus, in this docket, the Commission will decide on the prudence and reasonableness of: PEF's actions relating to the steam generator replacement project, PEF's subsequent actions following the delaminations of the walls of the reactor containment building of the CR3 unit, and costs that have resulted and will result from those actions. From these decisions will flow further decisions as to how much, if any, of (a) the costs resulting from PEF's actions, including replacement fuel and power costs, and (b) costs to repair the CR3 containment

building, should be recovered from PEF's retail customers and how much, if any, of those costs should be borne by PEF's shareholders. 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 actions that the Commission takes in this docket.

The Florida Retail Federation's Standing

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 actions surrounding the steam generator replacement project, the delamination events at CR3, and related actions and events, and by the Commission's

consequent decisions determining 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, and reasonable are exactly the interests that this proceeding is designed to protect.

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, as well as an intervenor in Progress's 2004-2005 storm cost recovery docket (Docket No. 041272-EI) and in Progress's 2009 general rate case. Finally, the relief requested -- intervention and the lowest Fuel Cost Recovery charges and any other rates and charges that would be impacted by the Commission's decisions herein -- is across-the-board relief that will apply to all of the FRF's members in the same way. Therefore, the requested relief is of the type that is appropriate for the FRF to obtain on behalf of its members.

Disputed Issues of Material Fact

8. 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. The FRF expects that additional, specific issues will be identified and developed as this docket progresses.

Issue: Were PEF's actions with respect to the design, construction, and maintenance of the CR3 containment

building reasonable and prudent?

Issue: Were the actions taken by PEF in its management, oversight, and execution of the CR3 steam generator replacement project reasonable and prudent?

Issue: Were the repair costs that PEF incurred as a result of PEF's actions in its management, oversight, and execution of the CR3 steam generator replacement project reasonable and prudent?

Issue: Were the actions taken by PEF, and the repair costs that PEF incurred, in attempting to repair the delaminations of the concrete walls of the CR3 containment building reasonable and prudent?

Issue: Were the replacement fuel and purchased power costs that PEF incurred as a result of the extended outage of CR3 reasonable and prudent?

Issue: How much, if any, of the replacement fuel and purchased power costs that PEF incurred as a result of the extended outage of CR3 should PEF be allowed to recover from PEF's retail customers?

Issue: How much, if any, of the repair costs that PEF incurred as a result of the delamination events and the extended outage of CR3 should PEF be allowed to recover from PEF's retail customers?

The FRF reserves all rights to raise additional issues in

accordance with the Commission's rules and the procedural orders in this case.

Statement of Ultimate Facts Alleged

9. With respect to the FRF's standing to intervene in this docket, the relevant ultimate fact is that a substantial number of the FRF's more than 9,000 members are PEF's retail customers, and accordingly, their substantial interests will be determined 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. With respect to the substantive issues in this docket, at this time, the FRF alleges that, in order to recover any of the costs incurred in connection with the extended outage and repair of its CR3 nuclear unit, it is PEF's burden to prove that its actions, and the costs that PEF incurred, as well as costs that PEF will incur in the future, with respect to the repairs, outage, and replacement fuel and purchases power costs were reasonable and prudent. The FRF will examine and evaluate available evidence and expects that both the FRF and other parties to this case will identify ultimate facts on the specific issues in this docket through discovery and analysis as the docket progresses.

Statutes and Rules That Entitle the Florida Retail Federation to the Relief Requested

11. 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.

12. 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.

Statement Regarding Agency Action and Rule 28-106.201(2), F.A.C.

13. This docket was initiated by the Commission as a spin-off from the Fuel Cost Recovery Clause docket to evaluate the prudence and reasonableness of PEF's actions and resulting costs associated with the CR3 steam generator replacement project and subsequent delamination events. Thus, this docket is in the nature of an original proceeding that does not involve reversal or modification of any action proposed by the Commission. Accordingly, the FRF believes that subsection (c) and portions of subsections (e), (f) and (g) of Rule 28-106.201(2), F.A.C., are not applicable to the FRF's petition to intervene. As set forth above, the FRF believes that there will be disputed issues of material fact to be decided in this case. The FRF has identified several such issues in summary form and intends to take positions with respect to individual issues as appropriate, and consistent with the procedural orders in this docket.

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 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 2 above.

Respectfully submitted this 12th day of August, 2011.



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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 12th day of August, 2011, to the following:

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