

ORIGINAL

Timolyn Henry

From: Tim Perry [tperry@mac-law.com]
 Sent: Wednesday, June 14, 2006 4:47 PM
 To: Filings@psc.state.fl.us
 Cc: tperry@mac-law.com; JWM -- John McWhirter
 Subject: Docket No. 060426-EI
 Attachments: FIPUG's Petition to Intervene-6-14-06.doc

1. Timothy J. Perry, McWhirter Reeves & Davidson, P.A., 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060426-EI, In re: Petition for exemption under Rule 25-22.082 (18), F.A.C., from issuing request for proposals (RFPs), by Florida Power & Light Company;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 6; and
5. The attached document is The Florida Industrial Power Users Group's Petition to Intervene.

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for exemption under
Rule 25-22.082(18), F.A.C., from issuing
request for proposals (RFPs), by
Florida Power & Light Company.

Docket No.: 060426-EI
Filed: June 14, 2006

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE**

Pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, the Florida Industrial Power Users Group ("FIPUG"), through its undersigned counsel, files its Petition to Intervene. In support thereof, FIPUG states:

1. The name and address of the affected agency is:

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

2. The name and address of the Petitioner is:

Florida Industrial Power Users Group
c/o McWhirter, Reeves, & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Fax: (813) 221-1854

3. Copies of all pleadings, notices, and orders in this docket should be provided to:

John W. McWhirter, Jr.
McWhirter, Reeves, & Davidson, P.A.
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Tampa, Florida 33602
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4. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida, including a substantial number of members in FPL's service territory. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require an adequate, reasonably priced and reliable supply of electricity in order to compete in their respective markets.

5. Statement of Affected Interests. FIPUG's interests are of the type that this 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); Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The Commission will decide in this docket whether it should approve Florida Power & Light Company's ("FPL") request for an exemption from Rule 25-22.082, Florida Administrative Code (the "Bid Rule"), which would otherwise require FPL to issue a Request for Proposals ("RFP") in connection with FPL's proposed advanced technology coal project (the "Self-build Option").

6. The Bid Rule plays an important role in ensuring that a public utility's selection of a proposed generation addition is the most cost-effective alternative available.¹ FPL requests an exemption from the Bid Rule for reliability reasons. In addition, FPL states that it is highly unlikely that a RFP will result in an alternative coal project that is more cost-effective than FPL's Self-build Option. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that costs passed onto its members, if any, by FPL are appropriate, and that its members receive an adequate and reliable supply of electricity. FIPUG has a long history of intervening to protect its members' interests in similar proceedings involving FPL and

¹ Rule 25-22.082(1), Florida Administrative Code.

other utilities.

7. Disputed Issues of Material Fact.² FIPUG is not opposed to the Commission granting the relief requested by FPL if adequate protections are in place for consumers. However, FIPUG has identified the following issues that may need to be addressed by the Commission:

- a. If the Commission grants the relief requested by FPL, what procedures, if any, are necessary to ensure that the costs incurred in constructing the Self-build Option are reasonable and prudent?
- b. If the Commission grants the relief requested by FPL, the granting of FPL's petition would not foreclose the consideration of alternative environmentally friendly advanced technology coal projects in future proceedings.
- c. If the Commission grants the relief requested by FPL, it will not foreclose application of the bid rule to future need determinations involving generation technology that is mature and readily available in the marketplace.

FIPUG is concerned that deviation from the Bid Rule process may make it difficult to ascertain in a future rate case whether the costs incurred in constructing the project were reasonable and prudent, as there would be no alternative to compare to the Self-build Option. In addition, FIPUG would like to avoid any unintended consequences as a result of granting FPL an exemption from the Bid Rule. Specifically, FIPUG would like the Commission to reserve its power to evaluate and approve in future proceedings an environmentally friendly advanced technology coal project that may differ in type from the plant proposed by FPL. Further, FIPUG would like the Commission to reserve its power to continue to use the Bid Rule when evaluating generation capacity additions that use technologies that are readily available in the marketplace.

² FIPUG reserves its right to restate or rephrase the above issues, as well as raise additional issues pursuant to Commission rule, procedural order or CASR.

8. Statement of Ultimate Facts Alleged. To receive an exemption from the Bid Rule, FPL must meet the requirements set forth in Rule 25-22.082(18). When evaluating whether to grant the relief requested by FPL, the Commission should consider what, if any, procedures are necessary to ensure that the cost of the plant constructed by FPL is reasonable and prudent. Further, the Commission should reserve its power to consider other coal-fired generation technologies in future proceedings. Finally, the Commission should reserve its power to require the continued use of the Bid Rule when evaluating generation capacity additions in the future, regardless of fuel type.

9. Statutes and Rules that Require the Relief Requested by FIPUG. Statutes and rules that require the relief requested by FIPUG include, but are not limited to, Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205 and 25-22.082, Florida Administrative Code.

10. Statement Explaining How the Facts Alleged By FIPUG Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. 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 FIPUG's members are FPL retail customers, and accordingly, their substantial interests are subject to determination in and will be affected by the Commission's decision whether to grant FPL an exemption from Rule 25-22.082, Florida Administrative Code in this docket. Accordingly, FIPUG is entitled to intervene herein.

WHEREFORE, FIPUG requests that the Commission enter an order granting its petition to intervene.

s/ Timothy J. Perry

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Attorneys for the Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail and U.S. Mail this 14th day of June 2006, to the following:

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Florida Public Service Commission
Division of Legal Services
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Tallahassee, Florida 32399

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s/ Timothy J. Perry
Timothy J. Perry
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