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b. Docket No. 080001-EI

In Re: Fuel and Purchased Power Cost Recovery Clause with Generation Performance Incentive Factor.

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

d. There are a total of 15 pages.

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

(see attached file: FRF.PetitionToIntervene.6-18-08.doc)

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RW*

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost)
Recovery Clause with Generation) DOCKET NO. 080001-EI
Performance Incentive Factor)
_____) FILED: JUNE 18, 2008

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 and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. The FRF is an established association with more than 10,000 members in Florida, most of whom are retail customers of one or more of the investor-owned utilities -- Florida Power & Light Company ("FPL"), Progress Energy Florida, Inc. ("Progress"), Tampa Electric Company ("TECO"), Gulf Power Company ("Gulf"), and Florida Public Utilities Company ("FPUC"), collectively referred to as the "IOUs" -- whose fuel cost recovery charges are determined in this docket. 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 the IOUs, and in having the Commission take such other action to protect the interests of the FRF's members and

¹ All references herein to the Florida Statutes are to the 2007 edition thereof.

of all customers served by the IOUs as the Commission may deem appropriate.

The interests of the many members of the FRF who are customers of the IOUs will be directly affected by the Commission's decisions in this case, 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
100 East Jefferson 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.

3. The agency affected by this Petition to Intervene is:

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

4. The Florida Retail Federation is an established

association of more than 10,000 members in Florida. Many of the FRF's members are retail electric customers of FPL, Progress, TECO, and Gulf, and at least some of the FRF's members are customers of FPUC. The FRF's members require adequate, reasonably-priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership.

5. Statement of Affected Interests. In this docket, the Commission will decide whether to approve the IOUs' requests for fuel and purchased power cost recovery charges, including true-up amounts for costs already incurred and projected future costs, and also including FPL's and Progress's requested "mid-course correction" surcharges. At least FPL, Progress, and TECO have indicated that they are in significant "under-recovery" positions for 2008, meaning that their newly projected costs are significantly greater than were projected when their current fuel charges were set. Progress and FPL project that their 2008 fuel costs will exceed their previous estimates by a combined \$357 million in 2008. They make other adjustments and propose to collect their projected cost overruns over five months, jointly requesting a combined rate increase of \$959 million. The Commission will necessarily have to decide how much, if any, of these additional costs are justified, and the Commission will

also have to approve the rates and charges that would enable the IOUs to recover such costs, as well as their projected future costs. As the representative of its many members who are retail customers of the IOUs, the Florida Retail Federation's and its members' substantial interests will be affected by any action that the Commission takes in this docket.

6. The FRF's substantial interests are of sufficient immediacy to entitle the FRF 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. Dep't 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 10,000 members who are retail electric customers of the IOUs, and these members' substantial interests will be directly affected by the Commission's decisions regarding the IOUs' fuel charges. 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 fuel charges for the IOUs that are fair, just, reasonable, and not unduly discriminatory is exactly the type of interest that this proceeding is designed to protect. This is a proceeding to review fuel and purchased power costs and to set rates for the recovery of reasonable and prudent fuel and purchased power costs, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining the IOUs' fuel charges.

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 10,000 members are located in the IOUs' service areas and receive their electric service from the IOUs, for which they are charged the applicable retail rates, including the fuel charges, of the respective IOU. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF has previously participated as an intervenor in the Commission's Fuel Cost Recovery dockets, and the FRF was an intervenor in both FPL's 2005 general rate case and Progress's 2005 general rate case. Finally, the relief requested -- intervention and the lowest rates consistent with the Commission's governing law -- is across-the-board relief that will apply to all of the FRF's members in the same way, according to the fuel charges applicable to their service; therefore, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

8. Disputed Issues of Material Fact. 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: What are the appropriate final fuel adjustment true-up amounts for the period January 2007 through December 2007?

Issue: Considering the short time frame for collecting the increase, is it appropriate to include revised 2007 true up amounts in determining any midcourse adjustments rather than in year-end adjustments?

Issue: What are the appropriate estimated fuel adjustment true-up amounts for each of the IOUs for the period January 2008 through December 2008?

Issue: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded by each of the IOUs from January 2009 to December 2009?

Issue: What are the appropriate projected net fuel and purchased power cost recovery amounts to be included in the recovery factors for each of the IOUs for the period January 2009 through December 2009?

Issue: What are the appropriate levelized fuel cost recovery factors for each of the IOUs for the period January 2009 through December 2009?

Issue: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class for each of the IOUs adjusted for line losses?

Issue: Were FPL's hedging activities reasonable and prudent under the circumstances?

Issue: Were PEF's hedging activities reasonable and prudent under the circumstances?

Issue: Were TECO's hedging activities reasonable and prudent under the circumstances?

Issue: Were Gulf's hedging activities reasonable and prudent under the circumstances?

Issue: Were FPL's fuel procurement decisions and actions reasonable and prudent under the circumstances?

Issue: Were PEF's fuel procurement decisions and actions reasonable and prudent under the circumstances?

Issue: Were TECO's fuel procurement decisions and actions reasonable and prudent under the circumstances?

Issue: Were Gulf's fuel procurement decisions and actions reasonable and prudent under the circumstances?

Issue: Is FPL eligible to request a mid-course correction adjustment in its Fuel Charge?

Issue: Is PEF eligible to request a mid-course correction adjustment in its Fuel Charge?

Issue: Should the Commission hold a hearing on FPL's and PEF's requested mid-course corrections?

Issue: How much, if any, of FPL's requested mid-course

correction surcharge should the Commission allow FPL to recover between August 2008 and December 2008?

Issue: How much, if any, of PEF's requested mid-course correction surcharge should the Commission allow PEF to recover between August 2008 and December 2008?

The FRF reserves its rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. It is the burden of each of the IOUs to prove that its claimed fuel and purchased power costs are reasonable and prudent and that it is entitled to charge rates (fuel charges) to recover such costs. Discovery and further analysis will show whether the IOUs' actual 2007, actual 2008, and projected 2009 costs are reasonable and prudent. Discovery and further analysis will show whether the IOUs' proposed 2009 Fuel Charges are reasonable and prudent.

Neither FPL nor PEF is eligible to apply for a mid-course correction, because their actual fuel costs are not more than 10 percent above their projected 2008 fuel costs. Moreover, with regard to FPL specifically, FPL only manages its prima facie showing of costs exceeding projections by 10 percent by including \$329 million of lost revenues. Projected sales pose a substantial and significant factual issue that requires

resolution through a full evidentiary hearing, and the Commission should not grant FPL any part of its staggering rate increase until such a hearing has been held and all evidence tested. Also with regard to FPL, the Commission should note that in 2005, when facing an even greater cost overrun - \$770 million - FPL didn't even ask for a mid-course adjustment; rather, FPL asked to spread the under-recovery over the succeeding two years.²

Consumers are entitled to a full, timely hearing on FPL's and PEF's proposed mid-course corrections. Here, where there are so many unresolved factual issues, it would be inappropriate and unfair to consumers to force them to suffer FPL's proposed "rate shock" beginning in August. It would be much more fair, appropriate, and consistent with the Commission's previously articulated policies regarding mid-course corrections to require FPL to bear the costs in the interim and to require FPL to prove its need for any additional revenues in a full hearing. If the only hearing is to be the "omnibus" hearing in the Fuel Cost Recovery Docket and the other cost recovery dockets that will be held in early November, then FPL should bear the burden of its higher costs until final resolution in that hearing.

A substantial number of the FRF's more than 10,000 members

² Florida Power & Light Company, Corporate Communications Department, press release issued on September 9, 2005.

are retail customers of the IOUs, 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 customers of the IOUs, the FRF is entitled to intervene herein.

10. Statutes and Rules That Entitle the Florida Retail Federation to Relief. The applicable statutes and rules that entitle the FRF to relief include, but are not limited to, Sections 120.57(1), 366.04(1), 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106.205, Florida Administrative Code. 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 10,000 members are retail customers of the IOUs, 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 customers of the IOUs, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over the IOUs' rates and the Commission's statutory

mandate to ensure that the IOUs' 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 the IOUs' rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding the IOUs' rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in this Petition to Intervene.

CONCLUSION AND RELIEF REQUESTED

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 under the Commission's statutes, rules, and orders, seeks to intervene in the Commission's Fuel Cost Recovery Docket to protect its members' substantial interests in having the Commission set fuel and purchased power cost recovery charges for FPL, Progress, TECO, Gulf, and FPUC 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.

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 18th day of June, 2008.

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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 on this 18th day of June 2008, to the following:

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