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Subject: Electronic Filing - Docket 120009-EI
Attachments: 120009.FRF.PetitionToIntervene.2-7-12.pdf

a. Person responsible for this electronic filing:

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b. 120009-EI

In Re: Nuclear Cost Recovery Clause.

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 the Petition to Intervene of the Florida Retail Federation.

(see attached file: 120009.FRF.PetitionToIntervene.2-7-12.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar**Secretary to Jay LaVia & Schef Wright**

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DOCUMENT NUMBER-DATE

00745 FEB-7 12

2/7/2012

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Cost Recovery Clause) DOCKET NO. 120009-EI
_____) FILED: FEBRUARY 7, 2012

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 9,000 members in Florida, who provide retail goods and services to Floridians. Many of the FRF's members are retail customers of Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc. ("Progress"), the two public utilities that collect money from their customers, through the Nuclear Cost Recovery Clause ("NCRC"), for nuclear power plants that these utilities have asserted they may build. The Florida Retail Federation unequivocally supports nuclear power as part of Florida's electric supply system, where nuclear power projects are demonstrated to be cost-effective relative to all other means of meeting Floridians' energy needs and wants, and where a utility's proposal for a nuclear project includes meaningful, robust, enforceable protections for consumers, particularly provisions that ensure cost certainty and

¹ All references herein to the Florida Statutes are to the 2011 edition thereof.

performance certainty, and provisions that minimize risks imposed on customers. 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 FPL and Progress, and in having the Commission take such other action to protect the interests of the FRF's members and of all customers served by FPL and Progress as the Commission may deem appropriate. The interests of the many members of the FRF who are FPL and Progress customers 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
John T. LaVia, III
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Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
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Telephone (850) 385-0070
Facsimile (850) 385-5416.

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 9,000 members in Florida. Many of the FRF's members are retail electric customers of FPL and Progress. 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 FPL's and Progress's requests to recover from their customers certain costs through the NCRC and the Capacity Cost Recovery Clause ("CCRC"), pursuant to Section 366.93, Florida Statutes. The Commission will necessarily have to decide how much, if any, of these additional costs are appropriate for recovery through the NCRC, and the Commission will also have to approve the rates and charges that would enable FPL and Progress to recover such costs. As the representative of its many members who are retail customers of FPL and Progress, 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 9,000 members who are retail electric customers FPL and Progress, and these members' substantial interests will be directly affected by the Commission's decisions regarding these utilities' NCRC charges. Stated bluntly, Commission approval of any NCRC charges greater than zero will adversely affect the FRF's members who are FPL and Progress customers. 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 NCRC charges for FPL and Progress that are fair, just, and reasonable is exactly the type of interest that this proceeding is designed to protect. This is a proceeding to review FPL's and Progress's NCRC costs and to set rates - the NCRC component of these utilities' Capacity Cost Recovery Clause charges - for the recovery of reasonable and prudent costs that are eligible for NCRC recovery, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining FPL's and Progress's NCRC 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 9,000 members receive their electric service from FPL and Progress, for which they are charged the applicable retail rates, including these utilities' Capacity Cost Recovery Charges, which include the NCRC charges, approved by the Commission. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF participates as an intervenor in the Commission's Fuel Cost Recovery Clause dockets, and the FRF intervened and participated actively in both FPL's and Progress's 2005 and 2009 general rate cases. 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 NCRC and Capacity Cost Recovery 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: Should the Commission approve what FPL has submitted as its 2011 and 2012 annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

Issue: Was FPL's 2011 decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

Issue: What is the current total estimated all-inclusive cost (including AFUDC, sunk costs, advance payments by FPL's customers, and the equivalent capital financing costs incurred by FPL's customers) of the proposed Turkey Point Units 6 & 7 nuclear project?

Issue: What, if any, assurances has FPL provided to the Commission or to its customers that it will bring the Turkey Point Units 6 & 7 nuclear generating facility into commercial service at a definite cost, on which the Commission and FPL's customers can rely?

Issue: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

Issue: Has FPL demonstrated that it will bring the Turkey Point Units 6 & 7 nuclear generating units into

commercial service at any specific point in time, e.g., in a specific year?

- Issue: Should the Commission find that for the years 2010 and 2011 FPL's project management, contracting, accounting, and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?
- Issue: What, if any, system and jurisdictional amounts should the Commission approve as FPL's final 2010 and 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?
- Issue: What, if any, system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?
- Issue: What, if any, system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?
- Issue: What, if any, costs associated with the Levy Nuclear Project, including amounts that are addressed by the Stipulation and Settlement Agreement between Progress and Consumer parties in this docket, should the Commission approve for recovery by Progress through the NCRC?
- Issue: Has Progress calculated the cost amounts that it seeks to recover for the Levy Nuclear Project accurately and consistently with the Settlement Agreement?

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

Statement of Ultimate Facts Alleged

9. The Florida Retail Federation unequivocally supports nuclear power as part of Florida's electric supply system, where nuclear power projects are demonstrated to be cost-effective relative to all other means of meeting Floridians' energy needs and wants, and where a utility's proposal for a nuclear project

includes meaningful, robust, enforceable protections for consumers, particularly provisions that ensure cost certainty, performance certainty, and minimum risks being imposed on customers. The FRF does not believe that any of the proposed new nuclear projects have been shown to be cost-effective, because the proposing utilities' cost estimates continue to increase and these utilities either cannot or will not stand behind any cost estimates. Given the pendency of the Stipulation and Settlement Agreement between Progress, the FRF, and other Consumer parties in this docket (and in Docket No. 100437-EI and Docket No. 120022-EI), the FRF expects to focus its attention in this year's NCRC docket on FPL's proposed Turkey Point 6 and 7 nuclear plant proposal.

10. It is the burden of FPL and Progress to prove that their claimed NCRC costs are eligible for recovery through NCRC charges (Capacity Cost Recovery Clause charges), that such costs are reasonable and prudent, and that each utility is entitled to charge rates to recover such costs. The FRF does not believe that FPL has met the requisite burden to justify continuing cost recovery for its Turkey Point 6 and 7 project, because, among other things:

- a. FPL has not demonstrated or committed to cost certainty for the Turkey Point Units 6 & 7 nuclear facility;
- b. FPL has not committed to a definitive in-service date, as to when, if ever, the Turkey Point 6 and 7 project would begin generating power using nuclear fuel for the

benefit of customers;

- c. FPL has not committed to build the Turkey Point 6 and 7 units;
- d. FPL has not adequately evaluated other scenarios considering other nuclear technologies; and
- e. FPL has not demonstrated cost-effectiveness of the Turkey Point 6 and 7 project against other available supply-side and demand-side options for meeting the energy needs and wants of its customers.

11. A substantial number of the FRF's more than 9,000 members are FPL and Progress customers, and accordingly, their substantial interests are subject to determination in and will be directly affected by the Commission's decisions in this docket. Accordingly, as the representative association of its members who are FPL and Progress customers, the FRF is entitled to intervene in this proceeding.

12. 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), 366.07, and 366.93, 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 9,000 members are

retail customers of FPL and Progress, 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 FPL and Progress, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over utility rates and the Commission's statutory mandate to ensure that the rates of public utilities, including FPL and Progress, 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 FPL's and Progress's rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding their NCRC and Capacity Cost Recovery Clause 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

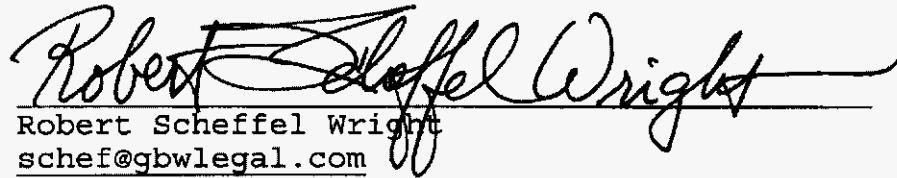
The Florida Retail Federation is an established association that, consistent with its purposes and history of intervening in Commission proceedings to protect its members' interests under the Commission's statutes, rules, and orders, seeks to intervene in the Commission's Nuclear Cost Recovery Clause docket to protect its members' substantial interests in having the Commission set NCRC and Capacity Cost Recovery charges for FPL and Progress that are fair, just, and reasonable. 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 the Commission through 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 7th day of February 2012.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically with the Office of the Commission Clerk and that a copy has been furnished to the following by electronic mail on this 7th day of February, 2012.

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