

**Eric Fryson**

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**From:** Rhonda Dulgar [rhonda@gbwlegal.com]  
**Sent:** Friday, February 10, 2012 2:27 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing - Docket 120022-EI  
**Attachments:** 120022.FRF.PetitionToIntervene.2-10-12.pdf

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**From:** Rhonda Dulgar  
**Sent:** Friday, February 10, 2012 2:23 PM  
**To:** george@cavros-law.com; jbrew@bbrslaw.com; john.burnett@pgnmail.com; kelly.jr@leg.state.fl.us; lbennett@psc.state.fl.us; paul.lewisjr@pgnmail.com; rehwinkel.charles@leg.state.fl.us; vkaufman@kagmlaw.com; jmoyle@kagmlaw.com; SAYLER.ERIK (SAYLER.ERIK@leg.state.fl.us); Schef Wright  
**Subject:** Electronic Filing - Docket 120022-EI

a. Person responsible for this electronic filing:

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b. 120022-EI

In Re: Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement by Progress Energy Florida, Inc.

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

d. There are a total of 11 pages.

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

(see attached file: 120022.FRF.PetitionToIntervene.2-10-12.pdf)

Thank you for your attention and assistance in this matter.

**Rhonda Dulgar**

**Secretary to Jay LaVia & Schef Wright**

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**GBW** Gardner. Bist. Wiener. Wadsworth Bowden  
Bush Dec. LaVia & Wright, P.A. ATTORNEYS AT LAW

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2/10/2012

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Limited )  
Proceeding to Approve Stipulation ) DOCKET NO. 120022-EI  
And Settlement Agreement by )  
Progress Energy Florida, Inc. ) FILED: FEBRUARY 10, 2012  
\_\_\_\_\_ )

**PETITION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION**

The Florida Retail Federation ("FRF"), pursuant to Chapters 120 and 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 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 is also a signatory party to the Stipulation and Settlement Agreement ("Settlement Agreement") that is the subject of this docket. Accordingly, the FRF respectfully petitions for intervention to protect its members' interests in having the Commission approve the Settlement Agreement. The Commission's actions herein will determine the substantial interests of the many members of the FRF who are PEF customers by determining their 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.

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<sup>1</sup> All references herein to the Florida Statutes are to the 2011 edition thereof.

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  
John T. LaVia, III  
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
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.

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.

5. This docket is a companion docket to Docket No. 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., and Docket No. 120009-EI, In Re: Nuclear Cost Recovery Clause. The Settlement Agreement resolves certain issues that are pending in these dockets and also addresses issues relating to Progress's base rates upon expiration of the current stipulation and settlement agreement approved by the Commission in Docket No. 090079-EI, In Re: Petition for Increase in Rates by Progress Energy Florida, Inc. (Order No. PSC-10-0398-S-EI, June 18, 2010) The Settlement Agreement also provides for the refund to customers, including the FRF's members, of certain amounts already collected through the Nuclear Cost Recovery Clause, via a refund-credit to customers' Fuel Cost Recovery charges; the FRF is also a party to the Fuel Cost Recovery Docket, Docket No. 120001-EI. In this docket, the Commission will decide whether to approve the Settlement Agreement entered into by Progress and several major entities that represent consumers' interests, including the FRF, the Office of Public Counsel, the Florida Industrial Power Users Group, the Federal Executive Agencies, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs. As the representative of its many members who are PEF retail customers, the Florida Retail Federation's and its members' substantial interests will be substantially affected and

determined 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 decision whether to approve the Settlement Agreement, as prayed by Progress and supported by the Consumer Intervenors who are signatory parties to that Agreement. The Commission's decision will either approve the Settlement Agreement, thereby resolving the several issues that are the subject of the Agreement and the dockets that it addresses, or deny approval of the Settlement Agreement, which would leave the

FRF in the position of having to continue litigation in those dockets, as well as litigating a general rate case that Progress would likely initiate if the Settlement Agreement were not approved. 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 is already a party to Docket No. 100437-EI and has petitioned to intervene in Docket No. 120009-EI, with every expectation that its intervention therein will be granted. Moreover, the FRF was 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 approval of the Settlement Agreement, with the consequent determination of what the FRF believes will be fair, just, and reasonable rates -- 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.

#### Issues of Material Fact

8. The FRF, PEF, and the other Consumer Intervenors who have entered into the Settlement Agreement believe that approval of the Agreement is in their best interests, the best interests of the customers they represent, and the public interest, and



accordingly, the FRF does not believe that there are any issues of material fact disputed by the Parties to the Agreement.

Ultimate Facts Alleged and Basis for Relief

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 issue, i.e., whether the Commission should approve the Settlement Agreement, the ultimate facts that entitle PEF, the FRF, and the other Parties to the Settlement Agreement to the relief requested are that the Agreement represents a fair and reasonable resolution of competing and conflicting interests and positions relating to a unique combination of complex issues in a comprehensive manner; that the rates resulting from approval of the Settlement Agreement will be fair, just, and reasonable; and that the Agreement is in the public interest. The FRF is entitled to intervene by Chapter 120, Florida Statutes, and all of the signatory parties are entitled to the substantive relief requested by Chapter 366, Florida Statutes, and Chapter 120, Florida Statutes.

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(2)&(4), 366.04(1), 366.05(1), 366.06(1)&(2), 366.07, and 366.076, 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.

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

13. This docket was initiated by the filing of PEF's Petition for Approval of the Settlement Agreement, and not by a

proposed Commission action. Thus, this docket is effectively 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.

#### **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 approve the Settlement Agreement. 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 10th day of February 2012.



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Attorneys for the Florida Retail Federation

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 10th day of February 2012, to the following:

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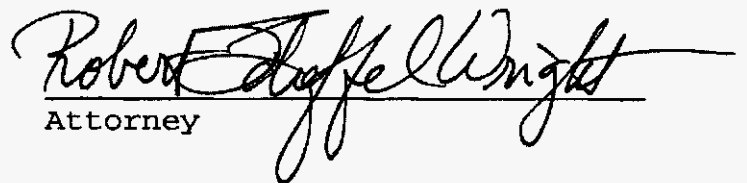
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