

4/7/2008 2:21 PM

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Ruth Nettles

From: Mike Twomey [miketwomey@talstar.com]  
 Sent: Monday, April 07, 2008 1:57 PM  
 To: Filings@psc.state.fl.us  
 Cc: Ruth Nettles; Kimberley Pena; Ann Cole  
 Subject: Re: FW: AARP Petition to Intervene in Docket No. 080083-EI (Note, this item on tomorrow's agenda so please distribute immediately)

Attachments: AAPR petition to intervene in Docket 080083 final.doc



AAPR petition  
o intervene in ..

Dorothy,

Here's the attachment. Please be sure that I didn't email you twice inadvertently when copying the parties. There is only one petition intended.

Thanks for your help and please let me know you got it this time.

Mike Twomey

Filings@psc.state.fl.us wrote:

> Mr. Twomey:  
 >  
 > We received the e-filing cover page below, however there was no  
 > attachment included. Please resubmit information, with attachment(s),  
 > to be considered an official filing. Thank you for assistance.  
 >  
 > Dorothy Menasco  
 > FPSC  
 > Office of Commission Clerk  
 > 850-413-6330  
 >

> -----Original Message-----

> From: Mike Twomey [mailto:miketwomey@talstar.com]  
 > Sent: Monday, April 07, 2008 12:41 PM  
 > To: Filings@psc.state.fl.us  
 > Subject: AARP Petition to Intervene in Docket No. 080083-EI (Note,  
 > this item on tomorrow's agenda so please distribute immediately)  
 >

> Electronic Filing

> a. Person responsible for this electronic filing:

>  
 > Michael B. Twomey, Post Office Box 5256, Tallahassee, Florida  
 > 32314-5256  
 >

> b. Docket No. 080083-EI

>  
 > In re: Florida Power & Light Company's Petition for Declaratory  
 > Statement Regarding the Application of Rule 25-6.0423, F.A.C.  
 >

> c. The document is being filed on behalf of AARP

> d. There are a total of 6 pages.

> e. The document attached for electronic filing is AARP Petition to  
 > Intervene and Adoption of Citizen's . . . . .

*Dme 4/7/08  
R.V.N.*

DOCUMENT NUMBER-DATE  
 02649 APR-7 8  
 FPSC-COMMISSION CLERK

4/7/2008 2:21 PM

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>  
> Thank you,  
>  
> Michael B. Twomey  
> (850) 421-9530  
>  
>  
>  
>

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory Statement )  
Regarding Applicability of Rule 25-6.0423, )  
F.A.C. by Florida Power & Light Company )  
\_\_\_\_\_)

DOCKET NO. 080083-EI  
FILED: April 7, 2008

**AARP PETITION TO INTERVENE AND ADOPTION OF CITIZENS'  
STATEMENT OF POSITION IN OPPOSITION TO PETITION FOR  
DECLARATORY STATEMENT, AND REQUEST FOR HEARING**

Pursuant to Chapter 120, Florida Statutes and Rules 25-22.039, and 28-106.205, Florida Administrative Code, AARP, through its undersigned attorney, files its Petition to Intervene and Adoption of Citizens' Statement of Position in Opposition to Petition for Declaratory Statement, and Request for Hearing, and in support thereof, states as follows:

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

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

2. The name and address of the petitioner is:

AARP  
200 West College Street  
Tallahassee, Florida 32301

3. All pleadings, motions, orders and other documents directed to the petitioner

should be served on:

Michael B. Twomey  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
Phone: (850) 421-9530  
Email: [miketwomey@talstar.com](mailto:miketwomey@talstar.com)

DOCUMENT NUMBER-DATE

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## PETITION TO INTERVENE

4. Florida Power & Light Company (“FPL”) is a regulated electric utility serving approximately 4.5 million retail customers throughout portions of the State of Florida.

5. AARP is a nonprofit, nonpartisan membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP has staffed offices in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. AARP has more than 39 million members in total, approximately 2.95 million of whom reside in the State of Florida. AARP’s Florida members reside throughout the state and a very significant number of them are retail residential customers of FPL.

### **AARP Florida Members’ Substantial Interests Affected**

#### 6. Statement of Affected Interests

The Commission will decide in this docket whether it should render a declaratory statement that Section 366.93, Florida Statutes and Rule 25-6.0423 Florida Administrative Code enable FPL to collect some significant construction costs for certain expenditures up to 10 years before a proposed nuclear plant is in used and useful service.

7. AARP’s members taking retail electric service from FPL have interests of the type this proceeding is designed to protect. See Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2<sup>nd</sup> DCA 1981). As described above, the purpose of the proceedings in this docket is to determine whether to issue a declaratory statement, which, if issued as requested, would necessarily increase the level and timing of revenues collected from customers.

8. Disputed Issues

AARP disputes whether the Commission should liberally construe Section 366.93, Florida Statutes and the Commission's rules adopted pursuant to it to permit FPL to collect from its customers through early cost recovery the costs of certain heavy forgings as if they were "pre-construction costs" under the applicable rules, when the Citizens, AARP and others believe the costs are clearly "construction costs," and, thus, not eligible for such early recovery from customers.

9. Statement of Ultimate Position

AARP takes the position that the proposed liberal construction of Section 366.93, Florida Statutes, is impermissible.

10. Statutes and Rules that Require the Relief Requested by AARP.

Statutes and rules that require the relief requested by AARP include, but are not limited to, Section 120.569, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

**ADOPTION OF CITIZENS' STATEMENT AND REQUEST FOR HEARING**

11. AARP fully adopts as its own the Citizens' Statement of Position in Opposition to Petition for Declaratory Statement, and Request for Hearing because the answer FPL seeks to its declaratory statement simultaneously ignores the plain meaning of the English language in construing the words "construction" and "pre-construction," the applicable Florida Statutes and Commission Rules, and, further, because not holding a hearing on the matter, as requested by the Citizens, would effectively constitute this Commission writing a "blank check" on the future electric bills of AARP's members served by FPL for whatever that utility subsequently wants to define as "pre-construction costs" and in whatever amounts.

12. The Commission Staff recognizes that “long-lead procurement items are not specifically identified as pre-construction costs in either Rule 25-6.0423 or Section 266.93, Florida Statutes” and, further, “that the items described by FPL sound more like ‘construction costs,’ i.e., ‘power plant buildings and all associated permanent structures, equipment and systems,’ listed in Rule 25-6.0423(2)(i), than the ‘pre-construction costs’ listed in Rule 25-6.0423(2)(h).” Staff is correct in that observation and with good reason: (1) the plain meaning of the terms, (2) especially within the context of the historical regulatory usage of those terms, the applicable statutes and the Commission’s own rules. Asking for early and more favorable cost recovery for a duck by calling it an eligible cow doesn’t convert the bird to a cow, especially if the duck continues to walk and quack like a duck. Here the early payments sought by FPL relate chiefly to “heavy forgings like the reactor pressure vessel, steam generator shell, etc.,” items that are indisputably key and major components of the proposed nuclear power plants, all the other parts of which are very clearly “construction costs” within the meaning of the rules. In a word, the forgings remain “ducks” irrespective of when they are paid for.

13. As appropriately observed by the Citizens, denial of FPL’s declaratory statement will not relieve its customers from paying in advance for a portion of the costs associated with the reactors’ heavy forgings and other undisclosed items FPL may later wish to include as “pre-construction costs.” Rather, denying the declaratory statement will still result in customers paying the carrying or interest costs on the payments, but not their total amounts, the principal of which will still later be recovered through base rates over the lives of the generating units.

14. While it is true, as FPL states, that the prudence of the heavy forgings’ payments will be decided separately in subsequent hearings, it is equally true that the scope or totality of those payments and whether they should be allowed to be recovered early pursuant to FPL’s

greatly strained definition of “pre-construction” cannot be officially and conclusively known without having a hearing on the matter. AARP would prefer that the Commission at least generally know the amount it is willing to add to customers’ monthly bills before it approves early recovery.

WHEREFORE, AARP requests that this Commission grant it intervenor status in this docket as a full party on behalf of the significant number of its approximately 2.95 million Florida members served by Florida Power & Light Company and further that the Commission order a public hearing held to determine the totality of the costs being sought and whether the utility’s declaratory statement in the instant docket should be granted.

Respectfully submitted,

/s/ Michael B. Twomey

Michael B. Twomey

Attorney for AARP

Post Office Box 5256

Tallahassee, Florida 32314-5256

Telephone: 850-421-9530

Email: [miketwomey@talstar.com](mailto:miketwomey@talstar.com)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of this petition has been served by

electronic mail this 7th day of April, 2008 on the following:

Richard Bellak, Esquire  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

J.R. Kelly, Esquire  
Joseph A. McGlothlin, Esquire  
Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Tallahassee, Florida 32399-1400

R. Wade Litchfield, Esquire  
Bryan Anderson, Esquire  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420

/s/ Michael B. Twomey  
Attorney