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Subject: Docket No. 090145-EI
Attachments: FIPUG Petition to Intervene 05.12.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman
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DML 5/12/09 RAN

- b. This filing is made in Docket No. 090145-EI, In re: Petition of Progress Energy Florida, Inc. for Expedited Approval of the Deferral of Pension Expenses, the Authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance of Waiver of Rule 25-6.0143(1)(c),(d), and (t), F.A.C.
- c. The document is filed on behalf of Florida Industrial Power Users Group.
- d. The total pages in the document are 6 pages.
- e. The attached documents are FIPUG's Petition to Intervene.

Lynette Tenace

NOTE: New E-Mail Address
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Progress Energy Florida, Inc. for Expedited Approval of the Deferral of Pension Expenses, the Authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1)(c),(d), and (t), F.A.C.

DOCKET NO. 090145-EI

FILED: May 12, 2009

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

Pursuant to sections 120.542, .569, .57, Florida Statutes, and rules 25-6.0143, 25-22.039, 28-106.201 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. Name and address of agency. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

2. Name and address of Petitioner. The name and address of the Petitioner is:

Florida Industrial Power Users Group
c/o Keefe Anchors Gordon & Moyle, PA
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Telephone: (850) 681-3828
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3. Petitioner's representatives. Copies of all pleadings, notices, and orders in this docket should be provided to:

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4. Notice of docket. Petitioner received notice of this docket by a review of the Commission's website.

5. Statement of Substantial Interests. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets.

6. In this case, the Commission will consider Progress Energy Florida's (Progress) request for approval of the deferral of \$52.5 million of pension expense; authorization to charge \$33.1 million in storm hardening expenses to the storm damage reserve; a waiver of Commission rules to permit the storm hardening charges to be paid from the storm reserve; and expedited approval of these requests. The approval of any of these requests will affect FIPUG members' substantial interests by increasing their costs of electricity, thus affecting their production costs, their competitive posture, and their levels of employment. Thus, as customers of Progress, FIPUG's members' substantial interests will be affected in this docket.

7. FIPUG's interests are of the type that this proceeding is designed to protect. *See, Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d

478 (Fla. 2nd DCA 1981). The purpose of the proceeding is to evaluate Progress' requests and determine if any of the requests have merit. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that the rates it pays to Progress are just and reasonable.

8. Disputed Issues of Material Fact. Disputed issues of material fact include, but are not limited to, the following:

- a. Is Progress' request to defer \$52.5 million of pension expense just and reasonable, particularly in light of its pending rate case?
- b. Is Progress' request to charge \$33.1 million in storm hardening expenses to the storm damage reserve just and reasonable?
- c. Has Progress met the standard required for a rule waiver set out in section 120.542, Florida Statutes?

FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure which will be issued in this case.

9. Disputed Legal Issues. Disputed legal issues include, but are not limited to, the following:

- a. Does expedited processing of Progress' requests violate the parties' due process rights?
- b. Do Progress' requests violate the parties' rate case stipulation approved by the Commission in Order No. PSC-05-0945-S-EI in Docket No. 050078-EI?
- c. Has Progress met the legal requirements for rule waiver set out in section 120.542, Florida Statutes?

10. Statement of Ultimate Facts Alleged. Ultimate facts include, but are not limited to, the following:

- a. Progress' requests should be denied.
- b. Progress' requests violate the parties' rate case stipulation approved by the Commission in Order No. PSC-05-0945-S-EI in Docket No. 050078-EI.

- c. Progress has not met the requirements for a rule waiver set out in section 120.542, Florida Statutes.

11. Rules and statutes justifying relief. The rules and statutes that entitle FIPUG to intervene and participate in this case include, but are not limited to:

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.04(1), Florida Statutes;
- d. Section 366.06, Florida Statutes;
- e. Rule 25-6.0143, Florida Administrative Code;
- f. Rule 25-22.039, Florida Administrative Code;
- g. Rule 28-106.201, Florida Administrative Code;
- h. Rule 28-106.205, Florida Administrative Code.

12. Relief. FIPUG requests that it be permitted to intervene as a full party in this docket.

WHEREFORE, FIPUG requests that the Commission enter an order allowing it to intervene and participate as a full party in this docket.

s/ Vicki Gordon Kaufman
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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 12th day of May, 2009, to the following:

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