

Eric Fryson

From: Hayes, Annisha [AnnishaHayes@andrewskurth.com]
Sent: Monday, March 12, 2012 3:54 PM
To: Filings@psc.state.fl.us
Subject: 120015-EI Petition to Intervene of South Florida Hospital and Healthcare Association
Attachments: SFHHA Petition to Intervene.pdf

Electronic Filing

- a. Person responsible for this electronic filing:
George Humphrey
Florida Reg. No. 0007943
Andrews Kurth LLP
600 Travis, Suite 4200
Houston, TX 77002-3090
713-220-4200 (phone)
713-220-4285 (fax)
- b. Docket No. 120015-EI.
- c. Document being filed on behalf of South Florida Hospital and Healthcare Association (SFHHA).
- d. There is a total of 9 pages.
- e. The document attached for electronic filing is Petition to Intervene of South Florida Hospital and Healthcare Association
(See attached SFHHA Petition to Intervene.pdf)

Thank you for your attention and cooperation to this request.

Regards.
Annisha Hayes
Andrewskurth, LLP
1350 I Street, NW
Suite 1100
Washington, DC 20005
202-662-2783
202-662-2739 (fax)
ahayes@andrewskurth.com
www.andrewskurth.com

*Parties updated
3/12/12
-om*

The information contained in this e-mail and any attachments to it may be legally privileged and include confidential information intended only for the recipient(s) identified above. If you are not one of those intended recipients, you are hereby notified that any dissemination, distribution or copying of this e-mail or its attachments is strictly prohibited. If you have received this e-mail in error, please notify the sender of that fact by return e-mail and permanently delete the e-mail and any attachments to it immediately. Please do not retain, copy or use this e-mail or its attachments for any purpose, nor disclose all or any

DOCUMENT NUMBER-DATF

01424 MAR 12 2012

FPSC-COMMISSION CLERK

part of its contents to any other person. Thank you.

Confidentiality Notice: The information contained in this e-mail and any attachments to it may be legally privileged and include confidential information intended only for the recipient(s) identified above. If you are not one of those intended recipients, you are hereby notified that any dissemination, distribution or copying of this e-mail or its attachments is strictly prohibited. If you have received this e-mail in error, please notify the sender of that fact by return e-mail and permanently delete the e-mail and any attachments to it immediately. Please do not retain, copy or use this e-mail or its attachments for any purpose, nor disclose all or any part of its contents to any other person. Thank you

Treasury Circular 230 Disclosure: Any tax advice in this e-mail (including any attachment) is not intended or written to be used, and cannot be used, by any person, for the purpose of avoiding penalties that may be imposed on the person. If this e-mail is used or referred to in connection with the promoting or marketing of any transaction(s) or matter(s), it should be construed as written to support the promoting or marketing of the transaction(s) or matter(s), and the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for rate increase by Florida
Power & Light Company**

§
§
§
§

**Docket No.: 120015-EI
Filed: March 9, 2012**

**PETITION TO INTERVENE OF SOUTH FLORIDA
HOSPITAL AND HEALTHCARE ASSOCIATION**

The South Florida Hospital and Healthcare Association (“SFHHA”), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.201 and 28-106.205 of the Florida Administrative Code, hereby petitions the Florida Public Service Commission (“Commission”) to intervene in the captioned docket regarding the rates and charges proposed to be charged by Florida Power & Light Company (“FPL”). FPL is a public utility that is subject to the Commission’s jurisdiction over the rates and service of public utilities in Florida.

In support of their Petition to Intervene, SFHHA states as follows:

1. The name and address of SFHHA is:

South Florida Hospital and Healthcare Association
6030 Hollywood Blvd
Suite 140
Hollywood, Florida 33024
Phone: (954) 964-1660
Fax: (954) 962-1260

2. All pleadings, orders and correspondence should be directed to Petitioners' representatives as follows:

Kenneth L. Wiseman
Mark F. Sundback
Lisa M. Purdy
William M. Rappolt
J. Peter Ripley
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
Phone: (202) 662-2700
Fax: (202) 662-2739
kwiseman@andrewskurth.com
msundback@andrewskurth.com
lpurdy@andrewskurth.com
wrappolt@andrewskurth.com
priphey@andrewskurth.com

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

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

4. SFHHA is a regional healthcare provider association acting as an advocate, facilitator and educator for its members, and a voice for improving the health status of its community. Particularly, SFHHA advocates the interests, and encourages involvement, of its member organizations in communications with the public, to elected and government officials, and to the business community and engages in cost-effective projects and programs that benefit, or add value to the services offered by, its member organizations.

5. The individual healthcare institutions that are members of SFHHA are engaged in providing, *inter alia*, acute healthcare services. They receive electric power from and pay the rates of FPL. The healthcare institutions, because of the services they render, their

load profile, and their concern with reliable, consistent levels of service, have important concerns regarding FPL's services and rates.

6. **SFHHA Standing:** Under Florida law, to establish standing as an association representing its members' substantial interests, an association such as SFHHA 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.¹

7. SFHHA satisfies all of these "associational standing" requirements. First, substantially all of SFHHA's members are located in FPL's service area and receive their electric service from FPL, for which they are charged FPL's applicable service rates. As such, they will be substantially affected by the Commission's determination of FPL's rates. Second, SFHHA exists, as previously noted, to act as an advocate, facilitator and educator for its members and advocates the interests of its member organizations to elected and government officials, such as the Commission. SFHHA was, in fact, an intervenor in FPL's two prior general rate cases and a signatory to the 2010 and 2005 settlements that resolved the issues in each docket, respectively. Therefore, intervention is within the association's general scope of interest and activity. Third, the relief

¹ Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982).

requested -- intervention, and with it, the right to seek the lowest rates consistent with the Commission's governing law and policy -- is across-the-board relief that will apply to all of SFHHA's members in the same manner, according to the rate schedules under which they receive service. Therefore, the requested relief is of a type appropriate for an association to obtain on behalf of its members. As demonstrated, SFHHA has established standing as an association representing its members' substantial interests.

8. **Statement of Substantial Interests Affected:** This docket was initiated by a letter dated January 17, 2012 from FPL informing the Commission of FPL's intent to file a petition this spring for authority to increase its base rates effective on the first billing cycle day of January 2013. FPL's letter also indicated that FPL will request a subsequent based rate step adjustment to be effective when the Cape Canaveral power plant becomes operational in June 2013.

9. The proceeding in this docket thus will examine the rates that FPL will be authorized to charge to its customers. The Commission will necessarily have to decide whether any rate increases or decreases are justified, and if so, the Commission also will have to approve rates and charges in order to implement such increases or decreases. Thus, the disposition of this case will affect the rates charged by FPL, as well as the terms and conditions of service, impacting FPL's customers, including SFHHA's members that are connected to FPL's facilities. SFHHA's members require reliable, consistent and reasonably-priced electricity. Because SFHHA and its members will be directly and substantially affected by any action the Commission takes in FPL's current

docket, SFHHA has a substantial interest in the proceeding that is not adequately represented by other parties to this proceeding.²

10. For a potential intervenor to demonstrate that its substantial interests will be affected by a proceeding, the potential intervenor must show: (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing; and (b) the injury suffered is a type against which the proceeding is designed to protect.³ SFHHA satisfies these provisions. SFHHA seeks to protect its members' substantial interests as they will be affected by the Commission's decision in this case, and they face immediate injury if the Commission were to approve FPL's proposed rates, which are not just and reasonable and would be unduly discriminatory. SFHHA's participation in this rate case is designed to protect against that injury. If granted leave to intervene, SFHHA will be able to attempt to protect its members' substantial interests, including the ability to receive reliable and consistent electricity at fair, just and reasonable rates.

11. **Disputed Issues of Material Fact:** Disputed issues of material fact in this proceeding may include, but will not necessarily be limited to, the issues listed below. The following statement of issues is general in nature and SFHHA reserves the right to identify and develop additional issues and refine those listed below as this docket progresses in accordance with the Commission's rules. SFHHA expects that, as in past rate cases, numerous additional, specific issues will be identified and developed as this docket progresses.

² Insofar as this is a petition for intervention and because there is presently no agency decision pending in this docket, SFHHA states that Rule 28-106.201(c) of the Florida Administrative Code is not applicable.

³ See Ameristeel Corp. v. Clark, 691 So. 2d 473, 477 (Fla. 1997).

- Issue 1: Determining appropriate jurisdictional levels of FPL's Plant in Service, Accumulated Depreciation, and Rate Base for setting FPL's rates.
- Issue 2: Determining appropriate jurisdictional values of FPL's operation and maintenance expenses for setting FPL's rates.
- Issue 3: Determining whether FPL's expenditures sought to be included in the derivation of the cost of service were prudently incurred.
- Issue 4: Determining the appropriate capital structure for FPL for the purpose of setting FPL's rates.
- Issue 5: Determining the appropriate rate of return on equity for FPL for the purpose of setting FPL's rates.
- Issue 6: Determining the appropriate allocation of FPL's costs of providing retail electric service among FPL's retail customer classes
- Issue 7: Determining the appropriate rates to be charged by FPL for its services to each customer class.
- Issue 8: Determining the appropriate amount to be included in FPL's base rates for storm restoration accrual.
- Issue 9: Designing rates for recovery of revenue requirements.
- Issue 10: Determining the propriety of FPL's proposed projected twelve-month period ending December 31, 2013 as the test year for the permanent rate increase.
- Issue 11: Determining the propriety of FPL's proposed base rate step adjustment based on the in-service date of its new Cape Canaveral plant.

12. **Ultimate Facts Alleged:** Because SFHHA and the institutions supporting this filing have substantial interests that are subject to determination in this docket, SFHHA is entitled to intervene and participate in the proceeding which will determine the fair, just, and reasonable rates to be charged by FPL upon the expiration of 2010 settlement rates on the last billing cycle day of December 2012.

13. **Specific Statutes and Rules:** The applicable statutes and rules, include, but are not limited to:

- Chapters 120 and 366 of the Florida Statutes
- Florida Administrative Code Chapters 25-22 and 28-106

14. **Relation of Alleged Facts to the Statutes and Rules:** Chapter 120 of the Florida Statutes relates to agency decisions which affect the substantial interests of a participant and related procedures.⁴ Chapter 366 of the Florida Statutes declares the Commission's jurisdiction over FPL's rates and provides the Commission the statutory mandate to ensure that FPL's rates are fair, just and reasonable, and that those rates are not unduly discriminatory. The facts alleged here demonstrate that: (1) the Commission's decisions herein will have a significant impact on FPL's rates and charges; (2) FPL's customers represented by SFHHA will be directly impacted by the Commission's decisions regarding FPL's rates and charges herein; and (3) accordingly, that the statutes herein, among others, provide the basis for the relief requested by SFHHA.

15. Rules 25-22.039 and 28-106.205 provide that persons whose substantial interests are subject to determination or will be affected through an agency proceeding are entitled to, and may petition for, leave to intervene. Both rules also state that the petition to intervene must conform with subsection 28-106.201(2) of the Florida Administrative Code. Because SFHHA's members are FPL electricity customers, they have a substantial interest in the rates determined by the Commission and will be affected by the Commission's decisions in this docket. Accordingly, as the representative association of its members who are FPL customers, SFHHA, is entitled to intervene.

⁴ See Sections 120.569 and 120.57(1), Florida Statutes.

16. **Conclusion:** Consistent with the purposes of the SFHHA and the substantial interests of its members, SFHHA seeks to intervene in this general rate case docket. Because SFHHA has satisfied the elements necessary for standing as an association and because SFHHA's members have a substantial interest in FPL's proposed rates and charges which will be affected by the proceeding, the Commission should allow the intervention of SFHHA, as prayed herein.

17. **Relief Requested:** WHEREFORE, SFHHA respectfully requests that the Commission grant this Petition to Intervene. SFHHA also respectfully requests that the Commission require that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the SFHHA representatives indicated in paragraph 2 above.

Kenneth L. Wiseman
Mark F. Sundback
Lisa M. Purdy
William M. Rappolt
J. Peter Ripley
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
Phone: (202) 662-2700
Fax: (202) 662-2739

/s/ George E. Humphrey
George E. Humphrey
Florida Reg. No. 0007943
Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002-3090
Phone: (713) 220-4200
Fax: (713) 220-4285

Attorneys for the South Florida Hospital and Healthcare Association

March 12, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic mail, U.S. Mail, or Federal Express, this 12th day of March, 2012, to the following:

Florida Power & Light Company

Ken Hoffman
R. Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1858
Phone: (850) 521-3900
Fax: (850) 521-3939
Email: ken.hoffman@fpl.com

Florida Power & Light Company

John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420
Email: John.Butler@fpl.com

Florida Industrial Power Users Group

Jon C. Moyle, Jr.
Vickie Gordon Kaufman
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@kagmlaw.com
vkaufman@kagmlaw.com

J.R. Kelly

Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Phone: (850) 488-9330
Email: KELLY.JR@leg.state.fl.us

Fax: (850) 487-6419

Robert H. Smith

11340 Heron Bay Blvd. #2523
Coral Springs, FL 33076
Email: rpjrb@yahoo.com

Florida Retail Federation

Robert Sheffel Wright
John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth,
Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
Phone: (850) 385-0070
Fax: (850) 385-5416
Email: schef@gbwlegal.com

Jennifer Crawford

Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
Email: JCRAWFORD@PSC.state.fl.us

Federal Executive Agencies

Christopher Thompson
Karen White
c/o AFLOA/JACL-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, FL 32403
Email: chris.thompson.2@tyndall.af.mil

/s/ George E. Humphrey
George E. Humphrey