

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition by Florida Power & Light)
Company for Rate Unification and for) DOCKET NO. 20210015-EI
Base Rate Increase) FILED: March 10, 2021
_____)

PETITION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation ("FRF"), pursuant to Chapters 120 and 366, Florida Statutes, and Rules 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket.

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, address, and telephone number of the Petitioner are as follows:

Florida Retail Federation
227 South Adams Street
Tallahassee, Florida 32301
(850) 222-4082 (phone)
(850) 226-4082 (fax)

2. All pleadings, motions, orders and other documents should be directed to

Petitioner's representatives as follows:

James W. Brew
Laura Wynn Baker
Joseph R. Briscar
Stone Mattheis Xenopoulos & Brew, PC
1025 Thomas Jefferson St, NW
Suite 800 West
Washington, D.C. 20007
(202) 342-0800 (phone)
(202) 342-0807 (fax)
jbrew@smxblaw.com
lwb@smxblaw.com
jrb@smxblaw.com

4. The Florida Retail Federation is an established association of more than 8,000 members in Florida. Many of the FRF's members are retail electric customers of Florida Power & Light Company (“FPL”) and Gulf Power Company (“Gulf” or “Gulf Power”) (collectively, “the Companies”); and these members purchase electricity from FPL and Gulf pursuant to various rate schedules of the Companies that are subject to Commission review and approval. 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 Florida Public Service Commission (“Commission”) will decide whether to approve the Companies’ request for a general rate increase. The Companies initiated this docket by filing a Test Year Notification on January 11, 2021. In the Test Year Notification, the Companies estimate they will ask the Commission's authorization to increase base rates as follows: (a) by \$1,100 million effective January 1, 2022; (b) by \$615 million effective January 1, 2023; and (c) by \$140 million in each of 2024 and 2025 upon the completion of up to 1,800 MW of solar through a new Solar Base Rate Adjustment program. In addition, FPL completed its acquisition and merger of Gulf Power in January 2021. The Companies indicated that they will propose to transition all Gulf Power retail customers, including FRF members, to FPL’s rate structure, terms and conditions.

6. Accordingly, in this case, the Commission will decide whether any rate increases are justified, whether to allow FPL and Gulf to consolidate the base rates and rate schedules of the Companies, as well as how any rate transition mechanism should be fashioned for migrating Gulf Power customers. The interests of all FRF members that are customers of the Companies 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 receiving safe, adequate, and reliable electric service at the lowest possible cost, i.e., at fair, just, and reasonable rates.

7. The subject matter of this docket is well within FRF's established scope of interest and activity. The FRF routinely appears on behalf of its members in utility regulatory proceedings, including those initiated by or involving FPL and Gulf Power. The FRF was a signatory to the *Stipulation and Settlement Agreement* in Florida Power & Light's last rate case, which was approved by the Commission's Order No. PSC-16-0560-AS-EI, issued in Docket Nos. 1600021-EI, In Re: Petition for rate increase by Florida Power & Light Company, et al. The FRF was not a party to Gulf Power Company's most recent rate case, Docket No. 20160186-EI, but the FRF intervened and was an active participant in Gulf Power Company's most recent fully litigated rate case, Docket No. 110138-EI, In re: Petition for increase in rates by Gulf Power Company.

8. 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.¹ 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.² Here, the FRF is the representative of a large number of its members who are retail electric customers of the Companies, and these members' substantial interests will be directly affected by the Commission's decisions regarding the Companies' retail electric rates and the contemplated migration of Gulf Power customers to FPL's rates and terms of service. The interests that the FRF seeks to protect are of sufficient immediacy to warrant intervention, and its members' interests in

¹ Rule 28-106.205, F.A.C.

² *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997); *Agrico Chemical Co. v. Dep't of Env'tl. Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981).

having the Commission set rates for the Companies that are fair, just, reasonable, and not unduly discriminatory are exactly the interests that this proceeding is designed to protect. This is a general rate case, and the FRF seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining the Companies' rates.

9. 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: (1) that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency's decisions; (2) that the intervention by the association is within the association's general scope of interest and activity; and (3) that the relief requested is of a type appropriate for an association to obtain on behalf of its members.³ The FRF satisfies all of these "associational standing" requirements. A substantial number of the FRF's members are located in the Companies' service area and receive electric service from the Companies, for which they are charged the Companies' applicable, Commission-approved retail rates. The FRF exists to represent its members' interests in a number of venues, including matters before the Florida Public Service Commission. Indeed, the FRF has been an active participant in many proceedings before the Commission relating to the Companies. Finally, the relief requested—intervention and the lowest rates consistent with applicable laws and rules—is across-the-board relief that will apply to all of the FRF's members in the same way, according to the retail rate schedules under which they receive service; therefore, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

³ *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982).

10. Disputed Issues of Material Fact. The FRF anticipates that disputed issues of material fact will be identified in the course of these proceedings. Disputed issues of material fact currently include, but are not limited to, the following:

- a. What are the appropriate jurisdictional values of the Companies' Plant in Service, Accumulated Depreciation, and Rate Base for setting the Companies' rates to be effective as of January 1, 2022?
- b. What are the appropriate jurisdictional values of the Companies' operation and maintenance expenses for setting the Companies' rates in this case?
- c. What is the appropriate capital structure for the Companies for the purpose of setting the Companies' rates in this case?
- d. What is the appropriate rate of return on equity for the Companies for the purpose of setting the Companies' rates in this case?
- e. What are the appropriate billing determinants to be used in setting the Companies' rates in this case?
- f. What are the appropriate rates to be charged by the Companies for their services to each customer class?
- g. What are reasonable and appropriate mechanisms for consolidating FPL and Gulf Power rates and migrating Gulf Power customers to those rates?

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

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

- a. Whether the Companies have met their burden to prove that they are entitled to any rate increases?
- b. Whether the Companies have met their burden to prove that their existing rates and charges are not fair, just, and reasonable?

12. Laws Entitling Petitioner to Relief. The applicable statutes and rules that entitle the FRF to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1) & (2), and 366.07, Florida Statutes, and Chapter 28-106, Florida Administrative Code.

13. Statement of Conferral. Pursuant to Rules 28-106.204(3) and 28-106.205(2)(e), Florida Administrative Code, the FRF conferred with the other parties in this case regarding this petition to intervene. The FRF can represent that Florida Power & Light Company, the Office of Public Council, and the Florida Industrial Power Users Group do not object to this motion. The League of United Latin American Citizens of Florida, the Environmental Confederation of Southwest Florida, Inc., and Florida Rising, Inc. take no position on this motion.

14. Relief. The FRF requests that it be permitted to intervene as a full party in this docket.

WHEREFORE, the Florida Retail Federation respectfully requests that the Commission enter an order allowing it to intervene as a full party in this docket.

Respectfully submitted,

/s/ James W. Brew

James W. Brew

Laura Wynn Baker

Joseph R. Briscar

Stone Mattheis Xenopoulos & Brew, PC

1025 Thomas Jefferson St, NW

Suite 800 West

Washington, D.C. 20007

(202) 342-0800 (phone)

(202) 342-0807 (fax)

jbrew@smxblaw.com

lwb@smxblaw.com

jrb@smxblaw.com

Attorneys for the Florida Retail Federation

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail and/or U.S. Mail this 10th day of March, 2021, to the following:

Florida Power & Light Company
Mr. Ken Hoffman
134 West Jefferson Street
Tallahassee FL 32301-1713
ken.hoffman@fpl.com

Florida Consumer Action Network
Bill Newton
billn@fcan.org

AARP Florida
Zayne Smith
360 Central Ave., Suite 1750
Saint Petersburg FL 33701
zsmith@aarp.org

Earthjustice
Bradley Marshall/Jordan Luebke
111 S. Martin Luther King Jr. Blvd.
Tallahassee FL 32301
bmarshall@earthjustice.org
jluebke@earthjustice.org

Office of Public Counsel (21c)
J.R. Kelly/Patricia A. Christensen
c/o The Florida Legislature
111 W. Madison St., Rm 812
Tallahassee FL 32399
christensen.patty@leg.state.fl.us
kelly.jr@leg.state.fl.us

Florida Industrial Power Users Group
Jon C. Moyle, Jr./Karen A. Putnal
c/o Moyle Law Firm
118 North Gadsden Street
Tallahassee FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

GBW Legal
Robert Scheffel Wright/Joh T. LaVia
1300 Thomaswood Drive
Tallahassee FL 32308
schef@gbwlegal.com

Vote Solar (20a)
Katie Chiles Ottenweller
838 Barton Woods Rd NE
Atlanta GA 30307
katie@votesolar.org

/s/ Laura Wynn Baker

Laura Wynn Baker