

**Timolyn Henry**

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**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Thursday, March 09, 2006 3:50 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** Electronic Filing - Docket 060154-EI  
**Attachments:** FRF Petition to Intervene-Gulf Storm.March9.doc



FRF Petition to Intervene-Gulf...

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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b. Docket No. 060154-EI

In re: Gulf Power Company's Petition for a Financing Order Pursuant to Section 366.8260, of the Florida Statutes (2005) Relating to Storm- Recovery Financing.

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

CMP \_\_\_\_\_

d. There are a total of 12 pages.

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e. The document attached for electronic filing is The Florida Retail Federation's Petition to Intervene.

CTR \_\_\_\_\_

(see attached file: FRF Petition to Intervene-Gulf Storm.march9.doc)

ECR \_\_\_\_\_

Thank you for your attention and assistance in this matter.

GCL \_\_\_\_\_

Rhonda Dulgar  
Secretary to Schef Wright  
Phone: 850-222-7206  
FAX: 850-561-6834

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Gulf Power Company's Petition )  
 For a Financing Order Pursuant to ) Docket No: 060154-EI  
 Section 366.8260, of the Florida )  
 Statutes (2005) Relating to Storm- ) Filed: March 9, 2006  
 Recovery Financing. )  
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THE FLORIDA RETAIL FEDERATION'S PETITION TO INTERVENE

The Florida Retail Federation ("FRF"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions to intervene in the above-styled docket. In summary, the FRF is an established association with more than 10,000 members in Florida, many of whom are retail customers of Gulf Power Company ("Gulf" or "Gulf Power"). The interests of the many members of the FRF who are Gulf customers 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 further support of its Petition to Intervene, the FRF states as follows.

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, Attorney at Law  
John T. LaVia, III, Attorney at Law  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
(850) 222-7206 Telephone  
(850) 561-6834 Facsimile  
E-Mails - [swright@yvlaw.net](mailto:swright@yvlaw.net) and [jlavia@yvlaw.net](mailto:jlavia@yvlaw.net).

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

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

4. The Florida Retail Federation is an established association of more than 10,000 members engaged in retail businesses in Florida. Among the FRF's many authorized functions on behalf of its members is participation in government proceedings to protect its members' interests. Many - probably more than one thousand - of the FRF's members are retail electric customers of Gulf Power; these members purchase electricity from Gulf pursuant to several different Gulf 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. Statement of Affected Interests. In this docket, the Commission will decide whether to approve Gulf's request for a financing order to recover approximately \$137.8 million to be used to pay for storm related costs and to rebuild a storm reserve, and its associated request for approval of "Storm Charges" to repay bonds to be issued pursuant to that financing

order, or in the alternative, to implement surcharges or assessments to recover approximately \$126.1 million, which would similarly be used to pay for storm related costs and to rebuild a storm reserve. The amount of costs approved for recovery, as well as the mechanism used to recover such costs, will affect the FRF's members' substantial interests by increasing their costs of electricity, thus affecting their production costs, their ability to serve their customers, their competitive posture, and their levels of employment. The Commission will necessarily have to decide whether to approve any charges as requested by Gulf, and if so, at what levels. The Commission must also decide how to treat Gulf's request in light of the Commission's over-arching duty to ensure that Gulf's rates are, in their totality, fair, just, reasonable, and not unduly discriminatory.

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 - probably more than one thousand - of its members who

are retail electric customers of Gulf, and these members' substantial interests will be directly affected by the Commission's decisions regarding Gulf's retail electric rates. 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's protection against rates that are unjust, unfair, or unreasonable is exactly the type of interest 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 - probably more than one thousand - of the FRF's more than 10,000 members are located in Gulf's service area and receive their electric service from Gulf, for which they are charged Gulf's applicable retail rates. The FRF exists

to represent and protect its members' interests in a number of venues, including the Florida Public Service Commission. In this regard, the FRF was an intervenor in FPL's 2002 general rate case, FPL's 2005 general rate case, FPL's 2004 storm cost recovery docket, FPL's 2005 storm cost recovery docket, Progress Energy Florida's 2005 general rate case, and Progress's 2004 storm cost recovery case. Finally, the relief requested -- intervention and the lowest rates consistent with the Commission's governing law -- 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.

8. Disputed Issues of Material Fact. The FRF believes that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the following.

**ISSUE 1:** Has Gulf booked costs to its Storm Reserve using the appropriate methodology?

**ISSUE 2:** Has Gulf quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 3:** Has Gulf properly treated payroll expense associated with managerial employees when determining the costs that should be charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 4:** At what point in time should Gulf stop charging costs related to the 2005 storm season to the Storm Reserve?

**ISSUE 5:** Has Gulf properly quantified the costs of tree trimming that should be charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 6:** Has Gulf properly quantified the costs of company-owned fleet vehicles that should be charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 7:** Has uncollectible expense been appropriately charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 8:** Of the costs that Gulf has charged or proposes to charge to the Storm Reserve, should any portion(s) instead be booked as capital costs associated with its retirement (including cost of removal) and replacement of plant items affected by the 2005 storms? If so, what adjustments should be made?

**ISSUE 9:** Has Gulf appropriately quantified the costs of materials and supplies used during 2005 storm restoration activities that should be charged to the Storm Reserve? If not, what adjustments should be made?

**ISSUE 10:** Taking into account any adjustments identified in preceding issues, what is the appropriate amount of storm-related costs related to the 2005 storms to be charged against the Storm Reserve?

**ISSUE 11:** Were the costs that Gulf has booked to the Storm

Reserve reasonable and prudently incurred?

**ISSUE 12:** Should the Commission allow Gulf to recover any portion of "lost revenues" that Gulf experienced as a result of outages caused by the 2005 storms?

**ISSUE 13:** Were Gulf's pre-2005 distribution system maintenance activities reasonable, prudent, and consistent with "good utility practice?" If not, what action should the Commission take with regard to any surcharges it may approve as a result of this docket?

**ISSUE 14:** What, if any, consideration should the Commission give to its intended function of replicating a competitive market result in determining the issues in this case?

**ISSUE 15:** What is the appropriate amount of 2005 storm-related costs to be recovered from Gulf's customers?

**ISSUE 16:** If recovery is allowed, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

**ISSUE 17:** If recovery is allowed, what is the appropriate method for recovery, e.g., via "storm-recovery bonds" and "storm-recovery charges" pursuant to Section 366.8260, Florida Statutes, or via "conventional" surcharges approved by the Commission pursuant to its general ratemaking authority?

**ISSUE 18:** If recovery is allowed, what is the appropriate period for recovery of approved storm restoration costs?

**ISSUE 19:** If the Commission approves recovery of any storm-related costs, how should they be allocated to the rate classes?



**ISSUE 20:** What is the proper, reasonable, and prudent level of a Storm Reserve for Gulf, and how should Gulf accrue funds to any such reserve?

**ISSUE 21:** What is the appropriate method for Gulf to accrue additional funds to its Storm Reserve?

**ISSUE 22:** How should any costs associated with Gulf's accruing additional funds to its Storm Reserve be allocated to rate classes?

**ISSUE 23:** What is the appropriate treatment of the tax effects attributable to any storm surcharges that the Commission approves in this docket?

**ISSUE 24:** If the Commission approves surcharges for the recovery of storm-related costs, or for accruals to Gulf's Storm Reserve, or both, from Gulf's ratepayers, on what date should such surcharges become effective?

**ISSUE 25:** Should the Commission issue the requested financing order?

**ISSUE 26:** Should the Commission approve alternate "conventional" surcharges? If so, at what levels should such surcharges be set, and over what period of time should they be in effect?

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

9. Statement of Ultimate Facts Alleged. Gulf is entitled to recover the reasonable and prudent costs of restoring service following hurricanes and tropical storms. Gulf's entitlement, however, is conditioned upon Gulf's demonstrating that such

costs were reasonable and prudent, and that they could not have been avoided by reasonable and prudent preparation and pre-storm maintenance activities. Any cost recovery allowed by the Commission must also include appropriate credits or offsets for removal costs and for other applicable items. The actual amounts to be recovered from Gulf's customers, and the method of such recovery, must be determined pursuant to analysis and appropriate testing, in the hearings in this case, of the evidence of record brought forth in those hearings. With respect to Gulf's request for a financing order, Gulf must prove that the proposed structuring, expected pricing, and financing costs of storm-recovery bonds, if any are used, are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs.

10. Statutes and Rules That Entitle the Florida Retail Federation 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), 366.07, and 366.8260, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By the Florida Retail Federation Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. 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 - probably more than one thousand - of the FRF's members are Gulf'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 Gulf customers, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over Gulf's rates, including storm surcharges and financing orders, and the Commission's statutory mandate to ensure that Gulf's rates are fair, just, and reasonable. The facts alleged here by the FRF demonstrate (a) that the Commission's decisions herein will have a significant impact on Gulf's rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding Gulf's rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF herein.

#### **CONCLUSION AND RELIEF REQUESTED**

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 under the Commission's statutes, rules, and orders, seeks to intervene in this docket to protect its members' substantial interests in having the Commission set rates for Gulf Power Company that are fair, just, and reasonable. 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.

**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 9th day of March, 2006.

S/Robert Scheffel Wright  
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Retail Federation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Retail Federation's Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 9th day of March, 2006, to the following:

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