

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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**Docket No.: 080677-EI
Filed: March 16, 2009**

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

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

Florida Public Service Commission
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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 last general rate case and a signatory to the 2005 settlement that resolved the issues in that docket. Therefore, intervention is within the association's general scope of interest and activity. Third, the relief requested -- intervention, and with

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

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 November 17, 2008 from FPL informing the Commission of FPL's intent to file a petition this spring for authority to increase its base rates effective January 1, 2010. FPL's letter also indicated that FPL will request a subsequent year adjustment for 2011.

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 in order to provide service. 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

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.

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.

- Determining appropriate jurisdictional levels of FPL's Plant in Service, Accumulated Depreciation, and Rate Base for setting FPL's rates.
- Determining appropriate jurisdictional values of FPL's operation and maintenance expenses for setting FPL's rates.

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

- Determining whether FPL's expenditures sought to be included in the derivation of the cost of service were prudently incurred.
- Determining the appropriate capital structure for FPL for the purpose of setting FPL's rates.
- Determining the appropriate rate of return on equity for FPL for the purpose of setting FPL's rates.
- Determining the appropriate allocation of FPL's costs of providing retail electric service among FPL's retail customer classes
- Determining the appropriate rates to be charged by FPL for its services to each customer class.
- Determining the appropriate amount to be included in FPL's base rates for storm restoration accrual.
- Designing rates for recovery of revenue requirements.
- Determining the propriety of FPL's proposed Generation Base Rate Adjustment.
- Determining the propriety of FPL's proposed subsequent year adjustment based on a projected test 12-month test period ending December 31, 2011.

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 2005 settlement rates on December 31, 2009.

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

- Chapter 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 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.

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.

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March 16, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express to the following parties of record and interested parties, this 16th day of March, 2009.

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