

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost Recovery Clause.

DOCKET NO. 20170009-EI

DATED: JULY 20, 2017

**MOTION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION**

The Florida Retail Federation (“FRF”), pursuant to Chapters 120 and 366, Florida Statutes,<sup>1</sup> and Rules 25-22.039 and 28-106.205, Florida Administrative Code (“F.A.C.”), hereby moves for leave to intervene in the above-styled docket. The FRF is an established association with more than 8,000 members in Florida, who provide retail goods and services to Floridians. Many of the FRF’s members are retail customers of Florida Power & Light Company (“FPL”) and Duke Energy Florida, LLC (“Duke”), the two public utilities that collect money from their customers, through the Nuclear Cost Recovery Clause (“NCRC”), in connection with expenditures on certain nuclear power plant projects.

The FRF has participated as an intervenor party in several prior years’ NCRC dockets, and the FRF now respectfully moves for intervention in the 2017 NCRC docket to protect its members’ interests in having the Commission determine the fair, just, and reasonable rates to be charged by FPL and Duke, and in having the Commission take such other action to protect the interests of the FRF’s members and of all customers served by FPL and Duke as the Commission may deem appropriate. The interests of the many members of the FRF who are FPL and Duke 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 Florida Retail Federation states as follows.

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<sup>1</sup> All references herein to the Florida Statutes are to the 2016 edition thereof.

1. The name, address, and telephone number of the Petitioner are as follows:

Florida Retail Federation  
100 East Jefferson 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  
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Dee, LaVia & Wright, P.A.  
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Telephone (850) 385-0070  
Facsimile (850) 385-5416.

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 8,000 members in Florida. Many of the FRF's members are retail electric customers of FPL and Duke. 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 FPL's and Duke's requests to recover from their customers certain costs through the NCRC and the Capacity Cost Recovery Clause ("CCRC"), pursuant to Section 366.93, Florida Statutes. The Commission will necessarily have to decide how much, if any, of these costs are appropriate for recovery through the NCRC, and the Commission will also have to approve the rates and charges that would enable FPL and Duke to recover such costs, and to

approve other terms and conditions relating to recovery of such costs over time. As the representative of its many members who are retail customers of FPL and Duke, the Florida Retail Federation's and its members' substantial interests will be affected by any action that the Commission takes in this docket.

6. The FRF's substantial interests are of sufficient immediacy to entitle the FRF 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. Dep't 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 of its more than 8,000 members who are retail electric customers FPL and Duke, and these members' substantial interests will be directly affected by the Commission's decisions regarding these utilities' NCRC charges. Stated bluntly, Commission approval of any NCRC charges greater than zero, or approval of deferrals that would allow future recovery from customers, will adversely affect the FRF's members who are FPL and Duke customers. 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 set NCRC charges, and in determining the terms and conditions for the recovery of such charges, for FPL and Duke that are fair, just, and reasonable is exactly the type of interest that this proceeding is designed to protect. The FRF simply and properly seeks to protect its members' substantial interests as they will be affected by the Commission's decisions determining FPL's and Duke's NCRC charges.

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 of the FRF's more than 8,000 members receive their electric service from FPL and Duke, for which they are charged the applicable retail rates, including these utilities' Capacity Cost Recovery Charges, which include the NCRC charges, approved by the Commission. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF has participated in many prior years' NCRC dockets, and regularly participates as an intervenor in the Commission's Fuel Cost Recovery Clause dockets, and in general rate cases for FPL, Duke's predecessor, and other Florida investor-owned utilities. 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 NCRC and Capacity Cost Recovery charges applicable to their 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 accepts and will work with the issue list developed by the parties to this docket.

9. Statement of Ultimate Facts Alleged – FRF’s Standing. A substantial number of the FRF’s more than 8,000 members are FPL and Duke customers, and their substantial interests are subject to determination in and will be directly affected by the Commission’s decisions in this docket. Accordingly, as the representative association of its members who are FPL and Duke customers, the FRF is entitled to intervene in this proceeding.

10. Statement of Ultimate Facts Alleged – Substantive. It is the burden of FPL and Duke to prove that their claimed NCRC costs are eligible for recovery through NCRC charges (Capacity Cost Recovery Clause charges), that such costs are reasonable and prudent, and that each utility is entitled to charge rates to recover such costs. The FRF does not believe that FPL has met the requisite burden to justify continuing cost recovery for its Turkey Point 6 and 7 project. The FRF further believes that Duke is not entitled to recover from its customers certain costs associated with its abandoned Levy Nuclear Project.

11. 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 120.57(1), 366.04(1), 366.05(1), 366.06(1), 366.07, and 366.93, Florida Statutes, and Rule 25-22.039 and Chapter 28-106.205, Florida Administrative Code. 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 of the FRF’s more than 8,000 members are retail customers of FPL and Duke, 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 customers of FPL and Duke, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over utility rates and the Commission's statutory mandate to ensure that the rates of public utilities, including FPL and Duke, 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 FPL's and Duke's rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding their NCRC and Capacity Cost Recovery Clause charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in this Motion to Intervene.

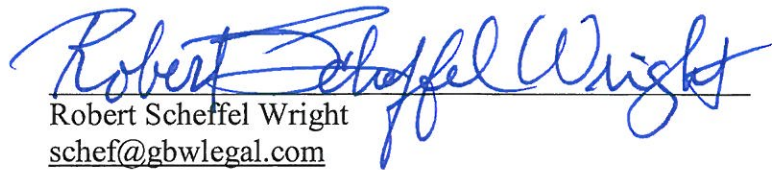
#### **CONCLUSION AND RELIEF REQUESTED**

12. 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 the Commission's Nuclear Cost Recovery Clause docket to protect its members' substantial interests in having the Commission set NCRC and Capacity Cost Recovery charges for FPL and Duke 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 the Commission through this proceeding.

#### **RELIEF REQUESTED**

**WHEREFORE**, the Florida Retail Federation respectfully requests the Florida Public Service Commission to enter its order GRANTING this Motion 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 20th day of July, 2017.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished

by electronic mail on this 20<sup>th</sup> day of July, 2017, to the following:

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