

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Matthew by Florida Power & Light Company | DOCKET NO. 20160251-EI  
| DATED: MARCH 29, 2018

**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 Rule 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”), which seeks recovery of approximately \$316.7 million in costs that FPL asserts it incurred in restoring service following the passage of Hurricane Matthew near Florida in 2016.

The FRF has participated as an intervenor party in many dockets involving the rates of FPL and other Florida investor-owned utilities over the past 18 years, including every major FPL rate case during this period and the FPL storm cost recovery dockets following the 2004 and 2005 storm seasons. The FRF respectfully moves to intervene in the above-styled docket to protect its members’ interests in having the Commission determine the fair, just, and reasonable rates to be charged by FPL 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 as the Commission may deem appropriate. The interests of the many members of the FRF who are FPL customers will be directly affected by the Commission’s decisions in this case, and accordingly, the FRF is entitled to intervene to

---

<sup>1</sup> All references herein to the Florida Statutes are to the 2017 edition thereof.

protect its members' substantial interests. In further support of its Petition to Intervene, the Florida Retail Federation states as follows.

1. The name, address, and telephone number of the FRF 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 the FRF's representatives as follows:

Robert Scheffel Wright  
John T. LaVia, III  
Gardner, Bist, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416.

3. The agency affected by this Motion 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. 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 request to recover from its customers certain costs that FPL

incurred in restoring service following the passage of Hurricane Matthew in 2016 adjacent to Florida's East Coast, which storm impacted FPL's system and FPL's customers. The Commission will necessarily have to decide how much, if any, of these costs are appropriate for recovery from customers, and the Commission will also have to approve the rates and charges that would enable FPL to recover such costs, and potentially to approve other terms and conditions relating to recovery of such costs over time. In this instance, since FPL has already recovered most or all of its asserted storm restoration costs pursuant to Commission Order No. 2017-0055-PCO-EI, issued herein on February 20, 2017, the Commission will have to determine how much, if any, of the amounts thus collected must be refunded to FPL's customers. As the representative of its many members who are retail customers of FPL, 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 of FPL, and these members' substantial interests will be directly affected by the Commission's decisions regarding FPL's recovery of storm restoration costs. 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 rates and charges for FPL 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 storm recovery charges, including the Commission's determinations of the ultimate amounts to be approved for recovery from, or refunded to, FPL's retail customers.

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, for which they are charged the applicable retail rates approved by the Commission. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission, and the FRF has regularly participated in many rate cases, Fuel Cost Recovery Clause proceedings, Nuclear Cost Recovery Clause proceedings, and storm cost recovery proceeding involving FPL over at least the past eighteen years. 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 rates and 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 following are disputed issues of material fact that the Commission will have to decide in this proceeding:

- a. What amount of costs incurred by FPL in connection with its storm restoration efforts following Hurricane Matthew is appropriate for recovery from FPL's retail customers?
- b. Did FPL correctly calculate the 2017 Interim Storm Restoration Recovery Charge authorized, and approved subject to refund, by Commission Order No. PSC-2017-0055-PCO-EI?
- c. How much, if any, of the amounts collected by FPL through its approved 2017 Interim Storm restoration Recovery Charge should be refunded or otherwise credited to FPL's retail customers?
- d. If the Commission determines that any amount of FPL's collections pursuant to its 2017 Interim Storm Restoration Recovery Charge should be refunded or otherwise credited to customers, how should such refund or credit be implemented?
- e. What, if any, other actions should the Commission take to ensure that FPL's rates and charges resulting from and associated with FPL's storm

restoration efforts following Hurricane Matthew are fair, just, and reasonable?

The FRF reserves its rights to add other issues pursuant to the Order Establishing Procedure for 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 customers. These customers and their substantial interests are subject to determination in and will be directly affected by the Commission’s decisions in this docket. Intervention in this proceeding is within the scope of the FRF’s purposes in promoting and protecting its members’ interests, and the relief sought is across-the-board rate relief that is appropriate for the FRF to seek on behalf of its members. Accordingly, as the representative association of its members who are FPL customers, the FRF is entitled to intervene in this proceeding.

10. Statement of Ultimate Facts Alleged – Substantive. It is the burden of FPL to prove that its claimed storm restoration costs were reasonable and prudently incurred.

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), and 366.07, Florida Statutes, and Rule 28-106.205, Florida Administrative Code. Rule 28-106.205, F.A.C., provides 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 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, 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, 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 rates and charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding their rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in this Motion to Intervene.

### CONCLUSION

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 above-styled docket, which addresses FPL's requests to recover approximately \$316.7 million in costs that FPL asserts it incurred in restoring service following the impacts of Hurricane Matthew to its system. The FRF seeks to intervene in order to protect its members' substantial interests in having the Commission set rates and charges for FPL 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 29th day of March, 2018.



Robert Scheffel Wright  
[schef@gbwlegal.com](mailto:schef@gbwlegal.com)

John T. LaVia, III  
[jlavia@gbwlegal.com](mailto:jlavia@gbwlegal.com)

Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

Attorneys for the Florida Retail Federation



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 29<sup>th</sup> day of March, 2018, to the following:

John T. Butler/Kenneth Rubin/Kevin I.C. Donaldson  
Florida Power and Light Company  
700 Universe Blvd  
Juno Beach, FL 33418  
[john.butler@fpl.com](mailto:john.butler@fpl.com)  
[Ken.Rubin@fpl.com](mailto:Ken.Rubin@fpl.com)  
[kevin.donaldson@fpl.com](mailto:kevin.donaldson@fpl.com)

Jon C. Moyle, Jr.  
Florida Industrial Power Users Group  
118 North Gadsden Street  
Tallahassee, FL 32301  
[jmoyle@moylelaw.com](mailto:jmoyle@moylelaw.com)

Patricia A. Christensen/J.R. Kelly  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 112  
Tallahassee, FL 323989-1400  
[christensen.patty@leg.state.fl.us](mailto:christensen.patty@leg.state.fl.us)  
[kelly.jr@leg.state.fl.us](mailto:kelly.jr@leg.state.fl.us)

Suzanne Brownless  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[SBrownle@psc.state.fl.us](mailto:SBrownle@psc.state.fl.us)

  
ATTORNEY