

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for recovery of costs associated with named tropical systems during the 2015, 2016, and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up, Tampa Electric Company.

DOCKET NO. 20170271-EI

DATED: May 8, 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 Tampa Electric Company (“Tampa Electric” or “TECO”).

The FRF has participated as an intervenor party in many dockets involving TECO and other Florida investor-owned utilities over the past 18 years, including every major TECO rate case during this period. The FRF respectfully moves to intervene in the above-styled docket to protect its members’ in having the Commission determine the fair, just, and reasonable rates to be charged by Tampa Electric and in having the Commission take such other action to protect the interests of the FRF’s members and of all customers served by TECO as the Commission may deem appropriate. The interests of the many members of the FRF who are TECO 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 2017 edition thereof.

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.  
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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 TECO. 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 TECO's request to recover from its customers certain costs that TECO incurred in restoring service following the impacts of several named storms on TECO's service area in 2015, 2016, and 2017. 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 TECO to recover such costs, and potentially to approve other terms and conditions relating to recovery of such costs over time. In this instance, the Commission has approved Interim Storm Cost Recovery Charges on a preliminary basis, subject to true-up and refund. Order No. PSC-2018-0125-PCO-EI at 3. In that Order, the Commission also approved TECO's Amended Implementation Stipulation, which provides in pertinent part that TECO will suspend the Storm Cost Recovery Charges and use the savings arising from the federal Tax Cuts and Jobs Act ("Tax Act"), which reduced the federal corporate income tax rate, to offset the storm costs with the tax savings, with both the final storm costs and the tax savings amounts subject to final determination and true-up in further proceedings before the Commission. Thus, in these circumstances, and pursuant to the above-cited Order, the Commission will have to determine how much, if any, of the amounts thus collected must be refunded or otherwise credited back to TECO's customers. As the representative of its many members who are retail customers of TECO, 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 substantial number of its more than 8,000 members who are retail electric customers of TECO, and these members' substantial interests will be directly affected by the Commission's decisions regarding TECO'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 (including refunds or credits) for TECO 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 TECO's storm recovery charges, including the Commission's determinations of the ultimate amounts to be approved for recovery from, or refunded to, TECO'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 TECO, 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, and other dockets involving TECO for many years. Finally, the relief requested -- intervention and fair treatment of FRF members -- is across-the-board relief that will apply to all of the FRF's members in the same way; 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 potential disputed issues of material fact that the Commission will have to decide in this proceeding:

- a. What amount of costs incurred by TECO in connection with its storm restoration efforts following storms in 2015, 2016, and 2017 is appropriate for recovery from TECO's retail customers?
- b. Did TECO correctly calculate the Interim Storm Cost Recovery Charges authorized, and approved subject to refund, by Commission Order No. PSC-2018-0125-PCO-EI?
- c. How much, if any, of the amounts collected by TECO through its approved 2018 Interim Storm Cost Recovery Charge should be refunded or otherwise credited to TECO's retail customers?

- d. If the Commission determines that any amount of TECO's collections pursuant to its 2018 Interim Storm Cost Recovery Charges 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 TECO's rates and charges resulting from and associated with TECO's storm restoration efforts 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 TECO's 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 appropriate for the FRF to seek on behalf of its members. Accordingly, as the representative association of its members who are TECO customers, the FRF is entitled to intervene in this proceeding.

10. Statement of Ultimate Facts Alleged – Substantive. The FRF's members who are served by TECO, and all of TECO's retail electric customers, are entitled to have the Commission determine retail service rates for TECO that fairly reflect the storm restoration costs incurred by TECO that are properly borne by retail customers, and to have the Commission ensure that all amounts collected by TECO through its Interim Storm Cost Recovery Charges are properly credited to TECO's storm restoration costs and, as necessary, refunded or credited back to customers. It is the burden of TECO to

prove that its claimed storm restoration costs were reasonable and prudently incurred, and that it has properly credited the tax reduction cost savings to customers in determining any amounts to be refunded pursuant to Order No. PSC-2018-0125-PCO-EI.

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 TECO, and accordingly, their substantial interests are subject to determination in and will be affected by the Commission's decisions in this docket. As the representative association of its members who are customers of TECO, 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 TECO, 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 TECO'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 Tampa Electric Company's requests to recover approximately \$102.5 million in costs that TECO asserts it incurred in restoring service following the impacts of named tropical storms and hurricanes in 2015, 2016, and 2017. The FRF seeks to intervene in order to protect its members' substantial interests in having the Commission set rates and charges, potentially including refunds or credits, for TECO 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 8th day of May, 2018.



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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 8th day of May, 2018, to the following:

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