

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Evaluation of Storm Restoration
Costs for Florida Power & Light Company
Related to Hurricane Irma

DOCKET NO. 20180049-EI

DATED: May 9, 2018

MOTION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation (“FRF”), pursuant to Chapters 120 and 366, Florida Statutes,¹ 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”).

The FRF has participated as an intervenor party in many dockets involving FPL and other Florida investor-owned utilities over the past 18 years, including every major FPL rate case during this period. 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

¹ All references herein to the Florida Statutes are to the 2017 edition thereof.

protect its members' substantial interests. In further support of its Motion 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 recovery from its customers of certain costs that FPL incurred

in restoring service following the impacts of Hurricane Irma on FPL's service area in 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, charges, and accounting treatment that would enable FPL to recover such costs, and potentially to approve other terms and conditions relating to recovery of such costs, including potential refunds or credits of amounts collected. In this instance, FPL has utilized another mechanism to cover its Hurricane Irma restoration costs, and is using savings accruing to FPL from the federal Tax Cuts and Jobs Act of 2017 ("Tax Act"), which reduced the federal corporate income tax rate, to replenish its accounts, 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, the Commission will have to determine how much of FPL's restoration costs are properly recoverable from retail customers and how much, if any, must be refunded or otherwise credited to appropriate accounts for the benefit of 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 substantial 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, and accounting for, storm restoration costs. Thus, the interests that the FRF seeks to protect are of sufficient immediacy to warrant intervention, and the FRF's interests in having the Commission set rates and charges, and determine appropriate accounting treatment (including refunds or credits for the benefit of customers) for FPL that are fair, just, and reasonable are exactly the type of interests 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 costs, including the Commission's determinations of the ultimate amounts to be approved for recovery from, or refunded or credited 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, and other dockets involving FPL for at least the past 18 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 FPL in connection with its storm restoration efforts following Hurricane Irma is appropriate for recovery from FPL's retail customers?
- b. How should FPL's storm restoration costs and tax savings benefits realized through the Tax Act be accounted for in determining the amount of Hurricane Irma storm restoration costs to be borne by FPL's retail customers?
- c. What, if any, amount of the tax savings should be refunded to customers or credited to FPL accounts for the benefit of customers, and if such refunds or credits are determined to be appropriate, how should they be implemented?

- d. What, if any, other actions should the Commission take to ensure that FPL's rates, charges, and accounting resulting from and associated with FPL's Hurricane Irma 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 (when issued).

9. Statement of Ultimate Facts Alleged – FRF's Standing. A substantial number of the FRF's more than 8,000 members are FPL'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 FPL 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 FPL, and all of FPL's retail electric customers, are entitled to have the Commission determine retail service rates for FPL, and to require accounting treatment of relevant costs and tax savings benefits that fairly reflect the storm restoration costs incurred by FPL that are properly borne by FPL's retail customers. It is the burden of FPL 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 its accounts for the benefit of customers.

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. 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, including the accounting for storm restoration costs and tax savings, (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 this docket, which addresses FPL's recovery of, and accounting for, costs associated with restoring service following Hurricane Irma. Published reports indicate that the amount of restoration costs claimed by FPL is approximately \$1.3 Billion. The FRF seeks to intervene in order to protect its members' substantial interests in having the Commission set rates and charges, and ensure the application of accounting treatment, 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 9th day of May, 2018.



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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 9th day of May, 2018, to the following:

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