

**Diamond Williams**

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**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Thursday, August 11, 2011 1:47 PM  
**To:** Russell Badders; Steven R. Griffin; J.R. Kelly; Joseph A. McGlothlin; Caroline Klancke; Filings@psc.state.fl.us; Keino Young; Martha Barrera; Jeffrey Stone; Schef Wright  
**Subject:** Electronic Filing - Docket No. 110138-EI  
**Attachments:** 110138.FRF.Petition2Intervene.8-11-11.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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Tallahassee, FL 32301  
(850) 222-7206  
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- b. 110138-EI  
In Re: Petition for Increase in Rates by Gulf Power Company.
- c. Document being filed on behalf of the Florida Retail Federation.
- d. There are a total of 12 pages.
- e. The document attached for electronic filing is Petition to Intervene of the Florida Retail Federation.

(see attached file: 110138.FRF.Petition2Intervene.8-11-11.pdf )

Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
Secretary to Schef Wright  
Phone: 850-222-7206  
FAX: 850-561-6834

8/11/2011

DOCUMENT NUMBER-DATE  
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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Increase in Rates )  
By Gulf Power Company ) DOCKET NO. 110138-EI  
\_\_\_\_\_ ) FILED: AUGUST 11, 2011

**PETITION 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, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, the FRF is an established association with more than 9,000 members in Florida, many of whom are retail customers of Gulf Power Company ("Gulf"). The FRF respectfully petitions for intervention to protect its members' interests in having the Commission determine the fair, just, and reasonable rates to be charged by Gulf after a full evidentiary hearing in this case, and in having the Commission take such other action to protect the interests of the FRF's members and of all of Gulf's customers as the Commission may deem appropriate. The interests of the many members of the FRF who are Gulf 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.

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<sup>1</sup> All references herein to the Florida Statutes are to the 2010 edition thereof.

In further support of its Petition to Intervene, the Florida Retail Federation states as follows.

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

Robert Scheffel Wright, Attorney at Law  
John T. LaVia, III, Attorney at Law  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
(850) 222-7206 Telephone  
(850) 561-6834 Facsimile.

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 9,000 members in Florida. Many of the FRF's members are retail electric customers of Gulf Power Company; these members purchase electricity from Gulf pursuant to several different Gulf rate schedules. 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 Gulf's request for a general rate increase. Gulf initiated this docket by filing a Test Year Notification on May 9, 2011, and subsequently filed its petition and testimony seeking total base rate increases of \$93,504,000 per year on July 8, 2011. The Commission will necessarily have to decide whether any rate increases are justified, and if so, the Commission will also have to approve the rates and charges that would enable Gulf to recover any authorized increase in Gulf's base rate revenues. As the representative of its many members who are Gulf retail customers, 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 it 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. Department 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 9,000 members who are retail electric customers of Gulf Power Company, and these members' substantial interests will be directly affected by the Commission's decisions regarding Gulf's retail electric rates. 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 for Gulf that are fair, just, reasonable, and not unduly discriminatory are exactly the interests that this proceeding is designed to protect. This is a general rate case, and the FRF seeks to protect its members' substantial interests as they will be determined by the Commission's decisions determining Gulf's rates.

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 9,000 members are located in Gulf's service area and receive their electric service from Gulf, for which they are charged Gulf's applicable retail rates. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, since 2005, the FRF has intervened in several general rate cases before the Commission involving Florida Power & Light Company, Progress Energy Florida, and Tampa Electric Company. Moreover, the FRF intervened in Gulf Power's 2006 storm cost recovery docket. In re: Gulf Power Company's Petition For a Financing Order Relating to Storm-Recovery Financing, PSC Docket No. 060154-EI, Order Granting Intervention, Order No. PSC-06-0264-PCO-EI, March 31, 2006. Finally, the relief requested -- intervention to represent its members' interests, and the lowest retail rates consistent with applicable laws and rules -- is across-the-board relief that will apply to all of the FRF's members in the same way, according to the retail rate schedules under which they receive service; therefore, the requested relief is of the type that is appropriate for an association to obtain

on behalf of its members. Accordingly, the FRF meets the requirements for associational standing under Florida administrative law.

8. Disputed Issues of Material Fact. The FRF believes that the disputed issues of material fact in this proceeding will include, but will not be limited to, the issues listed below. Naturally, at this early point in this docket, the issues stated below are broad, general issues, and the FRF expects that, as is the case in all rate cases, numerous additional, specific issues will be identified and developed as this docket progresses.

Issue: What are the appropriate jurisdictional values of Gulf's Plant in Service, Accumulated Depreciation, and Rate Base for setting Gulf's rates to be effective following the conclusion of this proceeding?

Issue: What are the appropriate jurisdictional values of Gulf's operation and maintenance expenses for setting Gulf's rates in this case?

Issue: What is the appropriate capital structure for Gulf for the purpose of setting Gulf's rates in this case?

Issue: What is the appropriate rate of return on equity for Gulf for the purpose of setting Gulf's rates in this case?

Issue: What are the appropriate cost rates for other sources of capital in Gulf's capital structure?

Issue: What are the appropriate levels of sales and other billing determinants to be used in setting Gulf's rates at the conclusion of this proceeding?

Issue: How should Gulf's costs of providing retail electric service be allocated to Gulf's retail customer classes?

Issue: What are the appropriate rates to be charged by PEF for its services to each customer class?

Issue: What is the appropriate amount to be included in Gulf's base rates for accrual to Gulf's storm reserve?

The FRF reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. It is Gulf Power Company's burden to prove that it is entitled to any rate relief, and to meet that burden, Gulf must prove that its existing rates and charges are not fair, just, and reasonable. A substantial number of the FRF's more than 9,000 members are retail customers of Gulf, and accordingly, 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 Gulf Power customers, the FRF is entitled to intervene herein.

10. 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 120.569, 120.57(1), 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By the Florida Retail Federation Entitle the FRF to the Relief Requested. 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 9,000 members are Gulf's retail customers, and accordingly, their substantial interests in fair, just, and reasonable electric rates will be determined by the Commission's decisions in this docket. Accordingly, as the representative association of its members who are Gulf customers, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over Gulf's rates and the Commission's statutory mandate to ensure that the rates that Gulf charges to its retail customers, including the FRF's members, are fair, just, and reasonable. Therefore, the Commission's substantive regulatory statute entitles the FRF and its members to have the Commission determine and fix retail rates for Gulf Power Company that are fair, just, and reasonable. The facts alleged here by the FRF demonstrate (a) that the

Commission's decisions herein will determine Gulf's rates and charges to be imposed and collected after the conclusion of this case, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding Gulf's rates and charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in its Petition to Intervene.

12. Statement Regarding Agency Action and Rule 28-106.201(2), F.A.C. As Gulf noted in its petition for increased rates (page 7, note 4), this case involves original proceedings pursuant to Chapter 366, Florida Statutes, and accordingly, it does not involve reversal or modification of any action proposed by the Commission. Accordingly, the FRF agrees with Gulf's observation that subsection (c) and portions of subsections (e), (f) and (g) of Rule 28-106.201(2), F.A.C., are not applicable either to Gulf's petition or to the FRF's petition to intervene. As set forth above, the FRF believes that, as in all general base rate cases before the Commission, there will be numerous disputed issues of material fact to be decided in this case. The FRF has identified a number of those issues in summary form and intends to take positions with respect to individual issues as appropriate, and consistent with the Order Establishing Procedure.

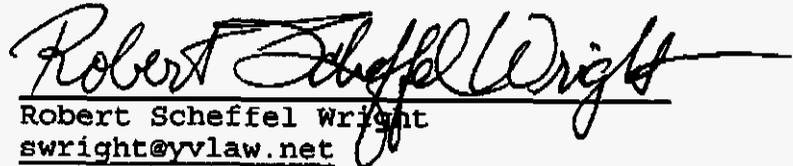
**CONCLUSION**

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, seeks to intervene in this general rate case docket to protect its members' substantial interests in having the Commission set rates for Gulf Power Company that are fair, just, reasonable, and not unduly discriminatory. 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 this proceeding, and accordingly, the FRF is entitled to intervene in this docket.

**RELIEF REQUESTED**

**WHEREFORE**, the Florida Retail Federation respectfully requests the Florida Public Service Commission to enter its order **GRANTING** this Petition 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 11th day of August, 2011.

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style and is positioned above a horizontal line.

Robert Scheffel Wright

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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 Florida Retail Federation's Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 11th day of August, 2011 to the following:

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Keino Young  
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Florida Public Service Commission  
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