

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Limited)
Proceeding to Approve Revised and) DOCKET NO. 130208-EI
Restated Stipulation and Settlement)
Agreement by Duke Energy Florida, Inc.) FILED: AUGUST 27, 2013
_____)

PETITION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation ("FRF"), pursuant to Chapters 120 and 366, Florida Statutes,¹ 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 8,000 members in Florida, many of whom are retail customers of Duke Energy Florida, Inc. ("DEF" or "Duke"). The FRF is also a signatory party to the Revised and Restated Stipulation and Settlement Agreement ("Revised Settlement Agreement") that is the subject of this docket. Accordingly, the FRF respectfully petitions for intervention to protect its members' interests in having the Commission approve the Revised Settlement Agreement. The Commission's actions herein will determine the substantial interests of the many members of the FRF who are DEF customers by determining their costs for electric service, 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.

¹ All references herein to the Florida Statutes are to the 2012 edition thereof.

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:

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3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

Statement of the FRF's and Its Members' Affected Interests

4. The Florida Retail Federation is an association, established in 1937, of more than 8,000 members in Florida. Many of the FRF's members are retail electric customers of Duke Energy Florida; these members purchase electricity from DEF pursuant to several different DEF 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. This docket is a companion docket to Docket No. 100437-

EI, In Re: Examination of the Outage and Replacement Fuel/Power Costs Associated with the CR3 Steam Generator Replacement Project by Progress Energy Florida, Inc., and Docket No. 130009-EI, In Re: Nuclear Cost Recovery Clause; the FRF is a party in both of these dockets. The Revised Settlement Agreement resolves certain issues that are pending in these dockets and also addresses issues relating to Duke's base rates upon expiration of the current Stipulation and Settlement Agreement approved by the Commission in Docket No. 120022-EI, In Re: Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement by Progress Energy Florida, Inc. (Order No. PSC-12-0104A-FOF-EI, March 15, 2012). The Revised Settlement Agreement also provides for the refund to customers, including the FRF's members, of certain amounts of insurance proceeds recovered by DEF from its insurance policies on CR3, via a refund-credit to customers' Fuel Cost Recovery charges; the FRF is also a party to the Fuel Cost Recovery Docket, Docket No. 130001-EI. In this docket, the Commission will decide whether to approve the Revised Settlement Agreement entered into by Duke and several major entities that represent consumers' interests, including the FRF, the Office of Public Counsel, the Florida Industrial Power Users Group, the Federal Executive Agencies, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs (collectively, the "Consumer Intervenors"). As the

representative of its many members who are DEF retail customers, the Florida Retail Federation's and its members' substantial interests will be substantially affected and determined by any actions that the Commission takes in this docket.

The Florida Retail Federation's Standing

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 a type against which 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 large number of its more than 8,000 members who are retail electric customers of DEF, and these members' substantial interests will be directly affected by the Commission's decision whether to approve the Revised Settlement Agreement, as prayed by Duke and supported by the Consumer Intervenors who are signatory parties to that Agreement. The Commission's decision will either approve the Revised Settlement Agreement, thereby resolving the several issues that

are the subject of the Agreement and the dockets that it addresses, or deny approval of the Revised Settlement Agreement, which would leave the FRF in the position of having to continue litigation in those dockets. 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 DEF that are fair, just, and reasonable are exactly the interests that this proceeding is designed to protect.

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 are located in DEF's service area and receive their electric service from DEF, for which they are charged DEF's applicable retail rates. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF is already a party to Docket No. 100437-EI, Docket No. 130001-EI, and Docket No. 130009-EI. Moreover, the FRF was an intervenor in PEF's 2005 general rate case and a signatory to the Stipulation and Settlement that resolved that docket, as well as an intervenor in Progress's 2004-2005 storm cost recovery docket (Docket No. 041272-EI) and in Progress's 2009 general rate case. Finally, the relief requested -- intervention and the approval of the Revised Settlement Agreement, with the consequent determination of what the FRF believes will be fair, just, and reasonable rates -- 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 the FRF to obtain on behalf of its members.

Issues of Material Fact

8. The FRF, DEF, and the other Consumer Intervenors who have entered into the Revised Settlement Agreement believe that approval of the Agreement is in their best interests, the best interests of the customers they represent, and the public

interest, and accordingly, the FRF does not believe that there are any issues of material fact disputed by the Parties to the Agreement.

Ultimate Facts Alleged and Basis for Relief

9. With respect to the FRF's standing to intervene in this docket, the relevant ultimate fact is that a substantial number of the FRF's more than 8,000 members are DEF's retail customers, and accordingly, their substantial interests will be determined by the Commission's decisions in this docket. Accordingly, as the representative association of its members who are DEF customers, the FRF is entitled to intervene herein.

10. With respect to the substantive issue, i.e., whether the Commission should approve the Revised Settlement Agreement, the ultimate facts that entitle DEF, the FRF, and the other Parties to the Revised Settlement Agreement to the relief requested are that the Agreement represents a fair and reasonable resolution of competing and conflicting interests and positions relating to a unique combination of complex issues in a comprehensive manner; that the rates resulting from approval of the Revised Settlement Agreement will be fair, just, and reasonable; and that the Agreement is in the public interest. The FRF is entitled to intervene by Chapter 120, Florida Statutes, and all of the signatory parties are entitled to the substantive relief requested by Chapter 366, Florida Statutes,

and Chapter 120, Florida Statutes.

Statutes and Rules That Entitle the Florida Retail Federation to the Relief Requested

11. The applicable statutes and rules that entitle the FRF to relief include, but are not limited to, Sections 120.569, 120.57(2)&(4), 366.04(1), 366.05(1), 366.06(1)&(2), 366.07, and 366.076, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

12. 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 8,000 members are DEF's retail customers, 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 DEF customers, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over DEF's rates and the Commission's statutory mandate to ensure that DEF's rates are fair, just, and reasonable.

Statement Regarding Agency Action and Rule 28-106.201(2), F.A.C.

13. This docket was initiated by the filing of DEF's

Petition for Limited Proceeding to Approve Revised and Restated Stipulation and Settlement Agreement, and not by a proposed Commission action. Thus, this docket is effectively an original proceeding that does not involve reversal or modification of any action proposed by the Commission. Accordingly, the FRF believes that subsection (c) and portions of subsections (e), (f) and (g) of Rule 28-106.201(2), F.A.C., are not applicable to the FRF's petition to intervene.

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 docket to protect its members' substantial interests in having the Commission approve the Revised Settlement Agreement. 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 27th day of August 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 27th day of August 2013, to the following:

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