

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate, by Duke Energy Florida, LLC

DOCKET NO. 20170272-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,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 Duke Energy Florida, LLC (“DEF” or “Duke”), which seeks recovery of approximately \$513 million in costs that Duke asserts it incurred in restoring service following the passage of Hurricanes Irma and Nate through its service territory in 2017.

The FRF has participated as an intervenor party in many dockets involving the rates of Duke and other Florida investor-owned utilities over the past 18 years, including every major rate case involving Duke and its predecessor companies, Florida Power Corporation and Progress Energy Florida, during this period and the Florida Power Corporation storm cost recovery docket following the 2004 storm season. 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 DEF and in having the Commission take such other action to protect the interests of the FRF’s members and of all customers served by DEF as the Commission may deem appropriate. The interests of the many members of the FRF who are DEF

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

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 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.
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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 Duke Energy Florida. 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 DEF's request to recover from its customers certain costs that DEF incurred in restoring service following the passage of Hurricanes Irma and Nate through its 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 and charges that would enable DEF 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 an interim storm restoration recovery charge on a preliminary basis, subject to true-up and refund. Order No. PSC-2018-0103-PCO-EI at 3. In that Order, the Commission also approved DEF's Amended Implementation Stipulation, which provides in pertinent part that DEF will suspend the storm charge and use the savings arising from the federal Tax Cuts and Jobs Act ("Tax Act"), which reduced the federal corporate income tax rate, to defray the storm costs by accruing the tax savings amount to DEF's retail storm reserve, subject to 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 DEF's customers. As the representative of its many members who are retail customers of Duke Energy Florida, 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 DEF, and these members' substantial interests will be directly affected by the Commission's decisions regarding DEF'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 DEF 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 DEF's storm recovery charges, including the Commission's determinations of the ultimate amounts to be approved for recovery from, or refunded to, DEF'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 DEF, 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 DEF and its predecessors over at least the past fourteen 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 DEF in connection with its storm restoration efforts following Hurricanes Irma and Nate is appropriate for recovery from DEF's retail customers?

- b. Did DEF correctly calculate the Interim Storm Restoration Recovery Charge authorized, and approved subject to refund, by Commission Order No. PSC-2018-0103-PCO-EI?
- c. How much, if any, of the amounts collected by DEF through its approved 2018 Interim Storm Restoration Recovery Charge should be refunded or otherwise credited to DEF's retail customers?
- d. If the Commission determines that any amount of DEF's collections pursuant to its 2018 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 DEF's rates and charges resulting from and associated with DEF's storm restoration efforts following Hurricanes Irma and Nate 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 DEF 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 DEF customers, the FRF is entitled to intervene in this proceeding.

10. Statement of Ultimate Facts Alleged – Substantive. It is the burden of Duke Energy Florida 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 DEF, 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 DEF, 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 DEF, 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 DEF'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.

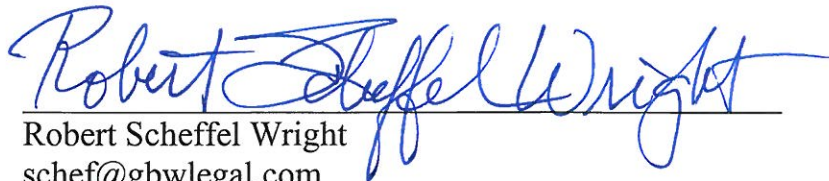
CONCLUSION

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 Duke Energy Florida's requests to recover approximately \$513 million in costs that DEF asserts it incurred in restoring service following the impacts of Hurricanes Irma and Nate to its system. 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 DEF 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.



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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 29th day of March, 2018, to the following:

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