

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Consideration of the Tax Impacts  
Associated with Tax Cuts and Jobs Acts of  
2017 for Duke Energy Florida, LLC. | DOCKET NO. 20180047-EI  
DATED: May 7, 2018

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**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 Duke Energy Florida, LLC (“DEF”).

The FRF has participated as an intervenor party in many dockets involving DEF and other Florida investor-owned utilities over the past 18 years, including every major DEF rate case during this period. The FRF respectfully moves to intervene in the above-styled docket to protect its members’ interests in the Commission’s consideration of how to fairly address the tax impacts associated with the Federal Tax Cuts and Jobs Acts of 2017 (the “Act”), which, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, thereby reducing the costs incurred by DEF and Florida’s other investor-owned utilities. The interests of the many members of the FRF who are DEF 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 DEF. 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 consider the tax impacts associated with the Act on DEF and DEF's customers, including many members of the FRF. The Commission will necessarily have to consider how to fairly allocate the tax cuts included in the Act between DEF and DEF's customers and

adjust the rates of DEF's customers to flow back the appropriate tax savings. As the representative of its many members who are retail customers of DEF, 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 DEF, and these members' substantial interests will be directly affected by the Commission's consideration of the tax impacts associated with the Act. 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 fairly determine the tax impacts of the Act on retail customers' rates 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 consideration of this important issue.

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 and other dockets involving DEF over at least the past eighteen 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 is the amount of tax savings to DEF associated with the Act?
- b. How should DEF's rates be adjusted to appropriately flow back the tax savings associated with the Act to DEF's customers?

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'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 DEF 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 DEF, and all of DEF's retail electric customers, are entitled to have the Commission determine retail service rates for DEF that fairly reflect the reduction in DEF's cost to serve that has resulted from the Tax Act. It is the burden of DEF to prove that any proposed allocation of the tax impacts of the Act result in fair, just and reasonable rate for DEF's 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 DEF, 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 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. The FRF seeks to intervene in order to protect its members' substantial interests in having the Commission consider the tax impacts of the Act and adjust DEF's rates so that they are fair, just, and reasonable. The interests of the FRF's

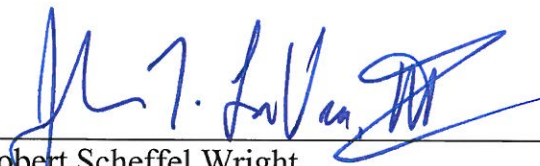


members that the FRF seeks to protect via its intervention and participation in this case are immediate and of the type to be protected by the Commission through this proceeding.

### **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 7th 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 7th day of May, 2018, to the following:

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