

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power Cost)
Recovery Clause with Generating) DOCKET NO. 20210001-EI
Performance Incentive Factor) FILED: OCTOBER 12, 2021
_____)

MOTION TO INTERVENE OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation (“FRF”), pursuant to Chapters 120 and 366, Florida Statutes,¹ and Rule 28-106.201, Florida Administrative Code (“F.A.C.”), hereby moves to intervene in the above-styled docket addressing the Fuel and Purchased Power Cost Recovery Clause charges of Florida’s investor-owned electric utilities (“IOUs”).

In summary, the FRF is an established association with more than 8,000 members in Florida, many of whom are retail customers of Florida’s IOUs, i.e., Florida Power & Light Company, Gulf Power Company, Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Company. The FRF respectfully moves for leave to intervene in order to protect its members’ interests in having the Commission determine the fair, just, and reasonable rates to be charged by the subject IOUs for fuel and purchased power costs and in having the Commission take such other action to protect the interests of the FRF’s members as the Commission may deem appropriate. The interests of the many members of

¹ All references herein to the Florida Statutes are to the 2021 edition thereof.

the FRF who are customers of Florida's IOUs will be determined by the Commission's decisions in this docket, 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 FRF's representatives as follows:

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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 Florida's investor-owned electric utilities. The FRF's members

require safe, 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 issues relating to the costs and rates of the IOUs for their fuel costs and purchased power costs. These decisions will directly affect the bills of the IOUs' customers, including the FRF's members who are served by the IOUs.

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 members who are retail electric customers of the IOUs whose fuel and purchased power costs and charges will be determined in this docket, and these members' substantial interests will be directly affected by the Commission's decisions herein. 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 fair, just, reasonable, and not unduly discriminatory Fuel Charges is exactly the type of interest 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 receive their electric service from the IOUs, for which they are charged those utilities' applicable Fuel Charges. The FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the FRF has been an intervenor in nearly all major IOU rates cases for the past 20 years and has previously been an intervenor party in the Fuel Docket.

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 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.

8. Disputed Issues of Material Fact. The FRF believes that the disputed issues of material fact in this proceeding will include those typical to the Fuel Docket, including the determination of the IOUs' Fuel Charges, GPIF values, and various true-up amounts. Of course, as an intervenor, the FRF takes the case as it finds it.

9. Statement of Ultimate Facts Alleged. It is the IOUs' burden to prove that their proposed Fuel Charges are fair, just, and reasonable. A substantial number of the FRF's more than 8,000 members are retail customers of the IOUs, and accordingly, their substantial interests are subject to determination and will be affected by the Commission's decisions in this docket. Accordingly, as the representative association of its members who are customers of the IOUs whose Fuel Charges will be determined in this docket, 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 Chapter 28-106, 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 the IOUs, 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 the IOUs, the FRF is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over the IOUs' rates and the Commission's statutory mandate to ensure that public utilities' rates 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 the IOUs' Fuel Charges, (b) that a substantial number of the FRF's members will be directly impacted by the Commission's decisions regarding the IOUs' Fuel Charges, and (c) accordingly, that these statutes provide the basis for the relief requested by the FRF in this Motion to Intervene.

11. Statement of Conferral. Pursuant to Rules 28-106.204(3) and 28-106.205(2)(e), F.A.C., counsel for the FRF has conferred, or attempted to confer, with the other parties in this docket regarding this Motion to Intervene. The FRF

can represent that, with respect to the FRF's motion: the Office of Public Counsel does not object; the Commission Staff take no position; FPL takes no position; and Gulf Power takes no position. The undersigned sought conferral regarding the FRF's motion by electronic mail at approximately 2:30 P.M. on October 12, and as of 4:10 P.M. on this date, the foregoing are the only responses received to his request for conferral.

CONCLUSION AND RELIEF REQUESTED

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 Fuel Docket to protect its members' substantial interests in having the Commission set rates for the IOUs 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.

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 paragraphs 1 and 2 above.

Respectfully submitted this 12th day of October, 2021.

/s/ Robert Scheffel Wright

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 12th day of October, 2021, to the following:

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