

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Petition for rate increase by Florida
Power & Light Company**

§
§
§
§

**Docket No.: _____-EI
Filed: March 20, 2009**

**PETITION FOR THE CONDUCT OF A GENERAL RATE CASE
AND REQUEST FOR HEARING OF
SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION**

The South Florida Hospital and Healthcare Association (“SFHHA”), pursuant to Chapters 120 and 366 of the Florida Statutes, and Rule 28-106.201 of the Florida Administrative Code, hereby: (1) petitions the Florida Public Service Commission (“Commission”) to conduct a general investigation (a general rate case) of the rates to be charged by Florida Power & Light Company (“FPL”) upon the expiration of the Stipulation and Settlement¹ entered into in Docket No. 050045-EI in 2005; and (2) requests the Commission to conduct a hearing to review the rates and charges imposed by FPL, a public utility subject to the Commission’s jurisdiction.

SFHHA respectfully petitions the Commission to conduct the requested general rate case in an attempt to protect the interests of its members. SFHHA petitions the Commission to: (a) review the rates to be charged by FPL beginning January 1, 2010, *i.e.*, upon expiration of the 2005 settlement; and (b) to determine and fix fair, just and reasonable rates to be charged and collected by FPL for service beginning on January 1, 2010, in coordination with Chapter 366 of the Florida Statutes. SFHHA also respectfully petitions the Commission to conduct a hearing on contested matters in connection with this Petition in accordance with Chapters 120 and 366 of

¹ In Re: Petition for rate increase by Florida Power & Light Company, PSC Docket No. 050045-EI, Order No. PSC-05-0902-S-EI, “Order Approving Stipulation and Settlement” (Fla. Pub. Serv. Comm’n, September 14, 2005)(“2005 settlement”).

the Florida Statutes. The requested hearing may be the same hearing as is conducted in this docket pursuant to FPL's petition for a rate increase, to the extent such evidentiary hearing is held pursuant to FPL's filing; if such is not the case, however, then consistent with the Florida Supreme Court's opinion in South Florida Hospital & Healthcare Ass'n v. Jaber,² a hearing should be held in approximately the same time frame to allow SFHHA and all other parties to "access and rely on the evidence and testimony" that has been filed and that will be filed in FPL's current docket.³ SFHHA seeks a hearing, whether separately or consolidated, as the Florida Supreme Court in the referenced case stated was necessary. It is immaterial that SFHHA is petitioning for a case that has already begun, given SFHHA's right to initiate a rate proceeding and its right to rely on the evidence introduced in the currently pending rate case. SFHHA believes that it would be most efficient for the Commission to conduct the hearings regarding the rate review request on the same schedule as those hearings scheduled under FPL's Docket No. 080677-EI. However, SFHHA is seeking its requested relief separate and apart from the FPL-initiated proceeding because SFHHA is entitled to the requested relief in its own right.

The interests of SFHHA's members will be directly affected by the Commission's decision in this case, and accordingly, SFHHA is entitled to protect its members' substantial interests. In further support of its Petition for the Conduct of a General Rate Case and Request for Hearing, SFHHA states as follows:

1. The name and address of SFHHA is:

South Florida Hospital and Healthcare Association
6030 Hollywood Blvd
Suite 140
Hollywood, Florida 33024

² South Florida Hospital & Healthcare Ass'n v. Jaber, 887 So. 2d 1210, 1214 (Fla. 2004)("Jaber").

³ See Jaber at 1214.

(954) 964-1660 Phone
(954) 9642-1260 Facsimile

2. All pleadings, orders and correspondence should be directed to Petitioners' representatives⁴ as follows:

Kenneth L. Wiseman
Mark F. Sundback
Jennifer L. Spina
Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, D.C. 20005
(202) 662-2700 Phone
(202) 662-2739 Facsimile
kwiseman@ andrewskurth.com
msundback@andrewskurth.com
jspina@ andrewskurth.com
lisapurdy@andrewskurth.com

3. The agency affected by this Petition and Request is:

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

4. SFHHA is a regional healthcare provider association acting as an advocate, facilitator and educator for its members, and a voice for improving the health status of its community. Particularly, SFHHA advocates the interests, and encourages involvement, of its member organizations in communications with the public, to elected and government officials, and to the business community and engages in cost-effective projects and programs that benefit, or add value to the services offered by, its member

⁴ Per Rule 28-106.105 of the Florida Administrative Code, "Counsel or qualified representatives who file a request for a hearing involving disputed issues of material fact with the agency have entered an appearance in the proceeding and shall be deemed counsel or qualified representative of record." SFHHA notes that it satisfies this provision with this filing. *See also* "Request of the South Florida Hospital and Healthcare Association to be Represented by Mark F. Sundback, *et al.*," Docket No. 080677-EI (filed March 16, 2009).

organizations. Substantially all of SFHHA's members are individual healthcare institutions. These healthcare institutions are engaged in providing, *inter alia*, acute healthcare services, and receive electric power from and pay the rates of FPL. The healthcare institutions, because of the services they render, their load profile, and their concern with reliable, consistent levels of service, have important concerns regarding FPL's services and rates.

5. **SFHHA Standing:** Under Florida law, to establish standing as an association representing its members' substantial interests, an association such as SFHHA 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.⁵

6. SFHHA satisfies all of these "associational standing" requirements. First, substantially all of SFHHA's members are located in FPL's service area and receive their electric service from FPL, for which they are charged FPL's applicable service rates, and will be substantially affected by the Commission's determination of such rates. Second, SFHHA exists, as previously noted, to act as an advocate, facilitator and educator for its members and advocates the interests of its member organizations to elected and

⁵ Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982).

government officials, such as the Commission. SFHHA was, in fact, an intervenor in FPL's last general rate case and a signatory to the 2005 settlement that resolved the issues in that docket. Therefore, this petition for a general rate case and request for hearing are within the association's general scope of interest and activity. Third, the relief requested -- the conduct of a general rate case and hearing to evaluate the rates proposed by FPL -- is across-the-board relief that will apply to all of SFHHA's members in the same manner. Therefore, the requested relief is of a type appropriate for an association to obtain on behalf of its members. Accordingly, SFHHA has standing as an association to represent its members' substantial interests.

7. **Relevant History:** FPL's last rate proceeding before the Commission was resolved via the 2005 settlement in September 2005. Prior to this settlement, FPL's rates were also set pursuant to settlement. The last time the Commission determined the full range of issues in a general rate case for FPL was in 1984.⁶

8. SFHHA has honored its commitments made under the 2005 settlement and does not seek rate reductions during the term of the 2005 settlement. However, SFHHA is concerned about the current rate increase sought by FPL. Because the Commission has not, within approximately the last 25 years, substantially reviewed the basis for FPL's rates and charges, SFHHA petitions for a general rate case and requests hearing to allow the Commission to review those rates and charges that are proposed to take effect immediately upon the expiration of the 2005 settlement, as contemplated by the parties to that settlement.

⁶ In Re: Petition of Florida Power & Light Company for an Increase in Its Rates and Charges, PSC Docket No. 830465-EL, Order No. 13537, "Order Authorizing Certain Increases" (Fla. Pub. Serv. Comm'n, July 24, 1984).

9. **Notice⁷ and Statement of Substantial Interests Affected:** The proceeding in this docket will examine the rates that FPL will be authorized to charge to its customers. The Commission will necessarily have to decide whether any rate increases or decreases are justified, and if so, the Commission will also have to approve rates and charges in order to implement such increases or decreases. Thus, the disposition of this case will likely affect rates for FPL, as well as the terms and conditions of service for FPL's customers, including SFHHA's members that are connected to FPL's facilities. SFHHA's members require reliable, consistent and reasonably-priced electricity in order to provide service and therefore SFHHA has a substantial interest in instituting a general rate case and hearing to protect these interests.

10. Substantial interests are demonstrated when a party establishes that: (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing; and (b) the injury suffered is a type against which the proceeding is designed to protect.⁸ SFHHA satisfies these provisions given that FPL is seeking to increase its rates as of January 1, 2010, which will result in injury to SFHHA and its members. SFHHA's Petition for a General Rate Case and Request for Hearing are designed to prevent such injury to the extent that FPL's rates may be unjust, unreasonable or unjustly discriminatory. SFHHA's substantial interests, including the ability to receive reliable and consistent electricity at fair, just and reasonable rates, are of the type that this proceeding is designed to protect.

⁷ Insofar as this petition initiates a new case, and also insofar as there is presently no agency decision pending in FPL's current docket, SFHHA states that Rule 28-106.201(2)(c) of the Florida Administrative Code is not applicable.

⁸ See Ameristeel Corp. v. Clark, 691 So. 2d 473, 477 (Fla. 1997).

11. SFHHA is also entitled to a hearing and general rate case because, as discussed above, the Commission has not scrutinized FPL's rate base since 1984. Because SFHHA may petition for rate relief at any time, this Petition is not premature. If FPL's proceeding settles, but does not result in rates that SFHHA believes to be just and reasonable, SFHHA may use the record developed in this proceeding up to the point of settlement. SFHHA is entitled to access and rely upon the testimony compiled in FPL's current docket, per the Florida Supreme Court's decision in Jaber.⁹ Granting SFHHA's petition and keeping the hearing in the instant docket on schedule will be administratively efficient, thereby reducing costs and serving the public interest.

12. SFHHA should be allowed to pursue its requested general rate case and hearing because SFHHA will not be able to, with mere status as an intervenor, vindicate all of its rights and interests in the existing docket filed by FPL. While SFHHA is entitled to the relief requested (a general rate case and a hearing to determine the specific rate), as a matter of statutory right under the Administrative Procedures Act, intervenor status would not grant an independent right to pursue this case through to a hearing and decision by the Commission. Intervenors in this case may only pursue it so long as FPL pursues it. FPL may decide to withdraw its petition for a rate increase which would terminate the case without an opportunity for SFHHA to pursue its claim for just and reasonable rates. Therefore, SFHHA's petition is necessary to protect its members' substantial interests in having the Commission fix and determine fair, just and reasonable rates for FPL to implement on January 1, 2010. If FPL withdraws its petition for a rate increase in this docket, SFHHA intends to proceed to hearing by "access[ing] and

⁹ See Jaber at 1214.

rely[ing] on the evidence and testimony” that has been filed and will be filed in this Docket, as the Florida Supreme Court has recognized is its right.¹⁰

13. **Disputed Issues of Material Fact:** Disputed issues of material fact in this proceeding may include, but will not necessarily be limited to, the issues listed below. The following statement of issues is general in nature and SFHHA reserves the right to identify and develop additional issues and refine those listed below as this docket progresses in accordance with the Commission’s rules. SFHHA expects that, as in past rate cases, numerous additional, specific issues will be identified and developed as this docket progresses.

- Determining appropriate jurisdictional levels of FPL’s Plant in Service, Accumulated Depreciation, and Rate Base for setting FPL’s rates.
- Determining appropriate jurisdictional values of FPL’s operation and maintenance expenses for setting FPL’s rates.
- Determining whether FPL’s expenditures sought to be included in the derivation of the cost of service were prudently incurred.
- Determining the appropriate capital structure for FPL for the purpose of setting FPL’s rates.
- Determining the appropriate rate of return on equity for FPL for the purpose of setting FPL’s rates.
- Determining the appropriate allocation of FPL’s costs of providing retail electric service among FPL’s retail customer classes.
- Determining the appropriate rates to be charged by FPL for its services to each customer class.
- Designing rates for recovery of revenue requirements.
- Determining the propriety of FPL’s proposed Generation Base Rate Adjustment.

¹⁰ See Jaber at 1214.

14. **Ultimate Facts Alleged:** Because SFHHA’s members have substantial interests that are subject to determination in this docket, SFHHA is entitled to petition for a general rate case and request a hearing as to the fair, just, and reasonable rates to be charged by FPL upon the expiration of the 2005 settlement rates on December 31, 2009. As specifically contemplated by the Florida Supreme Court’s decision and opinion in Jaber, SFHHA intends to proceed by “access[ing] and rely[ing] on the evidence and testimony” that has been filed in FPL’s current docket.¹¹

15. **Specific Statutes and Rules:** The applicable statutes and rules, include, but are not limited to:

- Chapters 120 and 366 of the Florida Statutes
- Florida Administrative Code Chapter 28-106

16. **Relation of Alleged Facts to the Statutes and Rules:** Chapter 366 of the Florida Statutes declares the Commission’s jurisdiction over FPL’s rates and the Commission’s statutory mandate to ensure that FPL’s rates are fair, just and reasonable. Section 366.06(2) provides, without imposing limitations on the requesting entity, that the Commission may consider “upon request made” whether the rates charged by a public utility are just, reasonable, and not unjustly discriminatory. Section 366.07 provides that the Commission is to conduct hearings on utility’s rates “either upon its own motion or upon complaint.” SFHHA asserts that proceedings initiated “upon request made” and “upon complaint” are one and the same. Both request that the Commission conduct formal proceedings and make decisions involving disputed issues of material fact to ensure that a public utility’s rates are just, reasonable and not unjustly discriminatory.

¹¹ See Jaber at 1214.

Under Section 120.569, a right to a hearing attaches when a party's interests are subject to determination by agency action and when the agency's decisions involve disputed issues of material fact, conditions which SFHHA has satisfied. Rule 28-106.201 provides that persons whose substantial interests are subject to determination by an agency proceeding are entitled to petition the agency for relief. A petition is the appropriate vehicle by which a party may ask an agency to conduct evidentiary proceedings where disputed issues of material fact are involved. This right is augmented by the Florida Supreme Court's decision in Jaber, granting SFHHA the right to petition for a further rate review or even rate reduction.¹² Therefore, Rule 28-106.201, Chapter 366 and Chapter 120 provide sufficient basis for SFHHA's standing to petition for a general rate case and request hearing of FPL's rates and charges.

17. **Relief Requested:** WHEREFORE, SFHHA respectfully requests that the Commission: (1) grant SFHHA's Petition for the Conduct of a General Rate Case; (2) grant SFHHA's Request for Hearing pursuant to Chapters 120 and 266 of the Florida Statutes; and (3) issue an order authorizing rates and charges for FPL that are fair, just, and reasonable, as required by Florida law. SFHHA also respectfully requests that the Commission require that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the SFHHA representatives indicated in paragraph 2 above.

¹² See Jaber at 1214.

Kenneth L. Wiseman
Mark F. Sundback
Jennifer L. Spina
Lisa M. Purdy
Andrews Kurth LLP
1350 I Street NW
Suite 1100
Washington, DC 20005
Ph. (202) 662-3030
Fax. (202) 662-2739

/s/ George E. Humphrey
George E. Humphrey
Florida Reg. No. 0007943
Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002-3090
Ph. (713) 220-4200
Fax. (713) 220-4285

Attorneys for the Hospitals

March 20, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically or by U.S. mail to the following parties of record and interested parties, this 20th day of March, 2009.

Florida Power & Light Company

Mr. Wade Litchfield
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859
Phone: (850) 521-3900
FAX: 521-3939
Email: wade_litchfield@fpl.com

Florida Power & Light Company

John T. Butler
700 Universe Boulevard
Juno Beach, FL 33408-0420
Phone: 561-304-5137
FAX: 561-691-7135
Email: John.Butler@fpl.com

Office of Public Counsel

J.R. Kelly
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: 850-488-9330

Credit Suisse

Yang Song, Equity Research
Phone: 212-538-4318
FAX: 212-322-9294
Email: yang.y.song@credit-suisse.com

I.B.E.W. System Council U-4

Robert A. Sugarman
c/o Sugarman Law Firm
100 Miracle Mile, Suite 300
Coral Gables, FL 33134
Phone: 305-529-2801
FAX: 305-447-8115

Saporito Energy Consultants

Thomas Saporito
Post Office Box 8413
Jupiter, FL 33468-8413
Phone: 561-283-0613
FAX: 561-952-4810
Email:
SaporitoEnergyConsultant@gmail.com

/s/ George E. Humphrey
George E. Humphrey