

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery
Clause.

DOCKET NO.: 20210010-EI
FILED: April 6, 2021

**FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE**

Petitioner, the Florida Industrial Power Users Group ("FIPUG"), pursuant to sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby files its Petition to Intervene, and in support thereof states as follows:

The Parties

1. Petitioner / Intervenor is:

Florida Industrial Power Users Group
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For purposes of service of all pleadings, notices, and orders in this docket, Intervenor's mailing and e-service addresses are as follows:

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2. The affected agency is the Florida Public Service Commission ("Commission"), with a principal place of business at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

3. The affected utilities in this docket are Florida Power and Light Company ("FPL"), Gulf Power Company ("GULF"), Duke Energy Florida ("DEF"), and Tampa Electric Company ("TECO").

FIPUG's Substantial Interests

4. FIPUG is an association of Florida-based businesses consisting of large users of electricity. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production and/or operations. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets and conduct business effectively and efficiently.

5. In this case, the Commission will consider the costs associated with the listed utilities' storm protection plans and projects ("SPP") as authorized by Section 366.96, Florida Statutes, and Commission Rule 25-6.030, Florida Administrative Code. Section 366.96 provides in pertinent part that the utilities will strengthen their respective electric utility infrastructure to protect and strengthen transmission and distribution infrastructure from extreme weather conditions, reduce outage times and restoration costs, and improve overall service reliability to customers, which include FIPUG members. These activities and the attendant costs of the activities as proposed by the participating utilities will have a direct and substantial impact on the respective utilities' customers, including FIPUG members.

6. As discussed below, FIPUG has standing to intervene in this matter on behalf of its members. In *Florida Home Builders Association v. Department of Labor and Employment*

Security, 412 So. 2d 351 (Fla. 1982), the Florida Supreme Court set forth the requirements for an organization to demonstrate associational standing on behalf of its members in administrative proceedings.¹ An organization must demonstrate that: 1) a substantial number of its members, although not necessarily a majority, are "substantially affected" by the agency action; 2) the subject matter of the case is within the association's general scope of interest and activity; and 3) the relief requested is of the type appropriate for the association to receive on behalf of its members. *Id.* at 353-54.

7. A substantial number of FIPUG members will be affected by the Commission's action taken on the respective utilities' requests for cost recovery in this case. *See Agrico Chem. Co. v. Dep't of Env't Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The subject matter of this docket is within FIPUG's general scope of interest and activity. FIPUG routinely appears on behalf of its members in cases concerning utility regulation, as the cost of electricity represents a significant portion of its members' production and/or operational costs. As such, the subject matter of the instant docket, i.e. evaluation of the respective utilities' request for Commission review and approval of activities and associated costs related to SPP efforts is well within FIPUG's scope of interest and activity. Additionally, the relief sought by FIPUG by way of the instant petition is of the type appropriate for FIPUG to receive on behalf of its members and pursuant to rule 28-106.205(1), Florida Administrative Code.

8. FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in this docket. Because FIPUG's members are large consumers of electricity, customers who will be affected by the outcome of this case, FIPUG's participation in this docket

¹ Although *Florida Home Builders Association* concerned standing in actions brought pursuant to section 120.56(1), Florida Statutes, its rationale has been extended to actions brought pursuant to 120.57, Florida Statutes, by the First District Court of Appeal's decision in *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982).

is appropriate. FIPUG seeks to ensure that storm protection activities for which the respective utilities seek Commission approval and cost recovery are reasonable and authorized.

9. FIPUG's interests are of the type that this proceeding is designed to protect. *See, Agrico Chem. Co.*, 406 So.2d at 482. The purpose of the proceeding is for the Commission to consider respective utilities' implementation of its storm hardening and preparedness programs and costs to protect and strengthen transmission and distribution infrastructure from extreme weather conditions, reduce outage times and restoration costs and improve overall service reliability to customers. The outcome of the proceeding thus will have significant implications, i.e., an increase in utility rates for approved utility costs spent in furtherance of authorized storm protection plan activities, for FIPUG members that are customers of the respective named utilities. Accordingly, FIPUG's interests in ensuring that the utilities' Storm Protection Plan appropriately strengthens transmission and distribution infrastructure from extreme weather conditions, reduces outage times and restoration costs, and improves overall service reliability to its customers, including FIPUG members, and the costs for which the utilities seek increased rates for costs of these activities, are the issues that this proceeding is designed to protect.

Notice of Proceeding

10. FIPUG received notice of this docket by a review of the Commission's website.

Statement of Position

11. The respective utilities must meet their burden of proof in this matter and establish that their respective cost recovery for SPP efforts and projects are reasonable, appropriate, and prudent.

Disputed Issues of Material Fact

12. Disputed issues of material fact include, but are not limited to, the following:

- a. Whether the SPP costs for which the respective utilities seek recovery are reasonable, appropriate, prudent and practical.
- b. The extent to which the projects and dollars spent pursuant to SPP plans are expected to reduce restoration costs and outage times associated with extreme weather events and enhance reliability, including whether the costs for which recovery is sought prioritizes areas of lower reliability performance.
- c. The estimated costs and benefits to the utility and its customers, including FIPUG members, of making the improvements proposed in the SPP projects for which cost recovery is sought.
- d. The estimated annual rate impact resulting from implementation of the projects for which recovery is sought.

13. FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this docket.

Statement of Ultimate Facts Alleged and at Issue

14. Ultimate facts alleged and at issue include, but are not limited to, the following:
 - a. Whether the costs for which the respective utilities seek recovery through the SPP cost recovery clause are reasonable, appropriate and prudent.

Rules and Statutes Justifying Relief

15. The rules and statutes that entitle FIPUG to intervene and participate in this case include, but are not limited to:

- e. Section 120.569, Florida Statutes;
- f. Section 120.57, Florida Statutes;
- g. Section 366.96, Florida Statutes;

- h. Section 366.04(1), Florida Statutes;
- i. Section 366.06, Florida Statutes;
- j. Rule 25-6.030, Florida Administrative Code
- k. Rule 28-106.201, Florida Administrative Code; and
- l. Rule 28-106.205, Florida Administrative Code.

Relief Requested

16. FIPUG requests that it be permitted to intervene as a full party in this docket.

Statement Required by Rule 28-106.204(3), Florida Administrative Code

17. Counsel for FIPUG has conferred with counsel for FPL, GULF, DEF, and TECO, and PCS Phosphate -White Springs and is authorized to represent that no parties oppose FIPUG's Petition to Intervene.

WHEREFORE, FIPUG requests that the Commission enter an order allowing it to intervene and participate as a full party in docket number 20210010-EI.

/s/ Jon C. Moyle

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail this 6th day of April 2021 to the following:

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