

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C., Duke
Energy Florida, LLC.

DOCKET NO. 20220050-EI
ORDER NO. PSC-2022-0186-PCO-EI
ISSUED: May 20, 2022

ORDER GRANTING FLORIDA INDUSTRIAL POWER USERS
GROUP'S PETITION TO INTERVENE

BY THE COMMISSION:

On March 9, 2022, Docket No. 20220050-EI was established to review Duke Energy Florida, LLC's (DEF) transmission and distribution storm protection plan pursuant to Section 366.95(5), Florida Statutes (F.S.). By the Order Establishing Procedure and Consolidating Dockets, Order No. PSC-2022-0119-PCO-EI, issued on March 17, 2022, this docket was consolidated for the purpose of the hearing with Docket Nos. 20220048-EI, 20220049-EI, and 20220051-EI, and controlling dates were established. The dockets are currently scheduled for hearing from August 2, 2022, through August 4, 2022.

Petition for Intervention

By petition dated May 5, 2022, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG alleges that any decisions made by the Commission regarding rate recovery of the costs associated with any programs and projects in DEF's storm protection plan will directly impact the rates that FIPUG members will have to pay for Commission-approved improvements in the plan. FIPUG also asserts that the reliability of electricity provided to FIPUG members will have a direct and substantial impact on DEF's customers, including FIPUG members. FIPUG requests standing to intervene in this matter on behalf of its members. FIPUG seeks full participation in this docket to conduct discovery as warranted in its judgment, and raise issues of material fact that may arise therein. Counsel for FIPUG asserts that they have conferred with counsel for DEF and is authorized to represent that DEF takes no position on FIPUG's Petition to Intervene. Neither of the two intervenors, the Office of Public Counsel, nor White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs, have filed an objection to FIPUG's Petition to Intervene and the time for doing so has expired.

Standards for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code (F.A.C.), persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or

pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show that (1) he will suffer injury in fact that is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) the substantial injury is of a type or nature that the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). See also Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Based on the above representations, FIPUG meets the first prong of *Agrico* in that the amount it pays in electric rates may ultimately be affected by this proceeding. In addition, FIPUG meets the second prong of *Agrico* because: (1) the purpose of this proceeding is to determine whether it is in the public interest to approve, approve with modification, or deny DEF's transmission and distribution storm protection plan; (2) in turn, such decisions will affect the scope of the cost recovery DEF may seek pursuant to Section 366.96(7), F.S.; and finally (3) the scope of such cost recovery will determine the rates paid by ratepayers such as FIPUG. Based on the foregoing, FIPUG meets both prongs of *Agrico* and has standing to intervene.

Based on the above representations, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the Motion to Intervene filed by Florida Industrial Power Users Group is hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Industrial Power Users Group takes the case as it finds it. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding to:

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 20th day of May, 2022.



Mike La Rosa
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

WLT

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.