

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by
Florida City Gas

DOCKET NO.: 20220069-GU
FILED: August 25, 2022

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

Petitioner, 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
c/o Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788

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

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

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 utility in this matter is Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG" or "company").

FIPUG's Substantial Interests

4. FIPUG is an ad hoc association consisting of industrial users of electricity, and in many cases, natural gas, in Florida. The cost of natural gas to those FIPUG members using it is material and contributes to FIPUG members' overall costs of production and/or business operations. These FIPUG members require adequate, reasonably priced, and reliable natural gas in order to compete effectively in their respective markets.

5. In this case, the Commission will consider FCG's request to increase rates paid by FCG's customers, including FIPUG members receiving natural gas from FCG. Specifically, FCG seeks Commission approval of a total base revenue increase of \$29.0 million based on a projected 2023 Test Year, an increase in the company's equity ratio from 48% to 59.6%, a return on equity (ROE) of 10.75%, approval to implement a reserve surplus amortization mechanism ("RSAM"), continuation of the Storm Damage Reserve provision, and approval for FCG to adjust base rates in the event tax laws change during or after the conclusion of this proceeding. These proposed issues and proposed changes will have a direct and substantial impact on FCG's customers, including FIPUG members that receive natural gas and natural gas services from FCG.

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. *See PSC Order 2020-2027 Order Granting Intervention to Florida Industrial Power Users Group In re: Petition for Rate Increase by Peoples Gas System, Docket No. 20200051-EI.*

7. A substantial number of FIPUG members will be affected by the Commission's action taken on FCG's Petition in this case. As such, each FIPUG member that is a natural gas customer of FGC will be affected by the outcome of this case. *See Agrico Chem. Co. v. Dep't of Env't Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

8. Moreover, 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 and natural gas represents a significant portion of its members' production costs. As such, the subject matter of the instant docket, i.e. evaluation of FCG's request for Commission review and approval of increased base rates and related issues identified above, is well within FIPUG's scope of interest and activity.

9. Additionally, the relief sought by FIPUG by way of the instant petition is of the type appropriate for it to receive on behalf of its members and pursuant to rule 28-106.205(1), Florida Administrative Code. FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in this docket. Because FIPUG has members who are industrial

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).

natural gas customers who will be affected by the outcome of this case, FIPUG's participation in this docket is appropriate to ensure that the rates charged to its members who received natural gas from FCG are fair, just, and reasonable. Additionally, FIPUG seeks to conduct discovery in this docket as warranted in its judgment and raise issues of material fact that may arise herein.

10. Further, 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, among other things, FCG's proposed base rate increases to its customers, including FIPUG members who receive natural gas from FCG. The outcome of the proceeding will thus have significant implications for FIPUG members that are customers of FCG. Accordingly, FIPUG's interest in ensuring that its members are charged fair, just, and reasonable rates for the natural gas and natural gas services provided by FCG are the type of matters that this proceeding is designed to protect.

Notice of Proceeding

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

Statement of Position

12. FCG must meet its burden of proof in this matter. FIPUG seeks to conduct discovery and reserves the right to modify its position based on information obtained during discovery or otherwise.

Disputed Issues of Material Fact

13. Disputed issues of material fact include, but are not limited to, the following:
- a. Whether the increased base rates for which FCG seeks cost recovery are fair, just, and reasonable;

- b. Whether the proposed changes in FCG's rate base and depreciation rates are fair, just, and reasonable;
- c. Whether FCG's proposed return on equity and capitalization structure are fair, just and reasonable;

14. 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

15. Ultimate facts alleged and at issue include, but are not limited to, the following:
- a. The natural gas rates FCG seeks to recover from its customers must be fair, just, and reasonable; and

Rules and Statutes Justifying Relief

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

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.04, Florida Statutes;
- d. Section 366.041, Florida Statutes;
- e. Section 366.05, Florida Statutes;
- f. Section 366.06, Florida Statutes;
- g. Rule 28-106.201, Florida Administrative Code; and
- h. Rule 28-106.205, Florida Administrative Code.

Relief Requested

17. 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

18. Counsel for FIPUG has conferred with counsel for FCG. Counsel for FCG indicated that FCG wishes to review FIPUG's Petition and reserve its rights to file a response.

WHEREFORE, FIPUG requests that the Commission enter an order allowing it to intervene and participate as a full party in docket number 20220069-GU.

/s/ Jon C. Moyle _____

Jon C. Moyle, Jr.

Karen A. Putnal

Moyle Law Firm, P.A.

118 North Gadsden Street

Tallahassee, Florida 32301

Telephone: (850)681-3828

Facsimile: (850)681-8788

jmoyle@moylelaw.com

kputnal@moylelaw.com

Attorneys for Florida Industrial Power Users Group

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 25th day of August 2022 to the following:

Walter Trierweiler
Matthew Jones
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
wtrierwe@psc.state.fl.us
majones@psc.state.fl.us

Christopher T. Wright
Joel Baker
700 Universe Boulevard
Juno Beach FL 33408
christopher.wright@fpl.com
joel.baker@fpl.com

Richard Gentry
Mary A. Wessling
Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee FL 32399
gentry.richard@leg.state.fl.us
Wessling.mary@leg.state.fl.us

T. Jernigan
H. Buchanan
E. Payton
R. Franjul
M. Duffy
Federal Executive Agencies
139 Barnes Drive, Suite 1
Tyndall AFB FL 32403
thomas.jernigan.3@us.af.mil
holly.buchanan.1@us.af.mil
ebony.payton.ctr@us.af.mil
rafael.franjul@us.af.mil
ULFSC.Tyndall@us.af.mil
marcus.duffy.3@us.af.mil

Beth Keating
Gunster, Yoakley & Stewart, P.A.
215 South Monroe St., Suite 601
Tallahassee, FL 32301
bkeating@gunster.com

/s/ Jon C. Moyle, Jr.
Jon C. Moyle, Jr.