

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0137-PCO-EI
ISSUED: April 20, 2021

ORDER PROVISIONALLY GRANTING LEAGUE OF UNITED LATIN
AMERICAN CITIZENS OF FLORIDA'S PETITION TO INTERVENE

On January 11, 2021, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition between March 12 and March 31, 2021, for an increase in rates effective January 2022. On March 12, 2021, Florida Power & Light Company (FPL) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case is scheduled on August 16 through August 27, 2021.

Petition for Intervention

On February 22, 2021, the League of United Latin American Citizens of Florida (LULAC) filed its Petition to Intervene (Petition). On March 1, 2021, FPL filed a Motion for Leave to File a Response to the Petition (Response).

LULAC states that it is part of the largest and oldest Hispanic civil rights organization in the United States whose purpose is to educate “the public on issues related to the environment . . . [and] economic empowerment.” LULAC alleges that it has a substantial number of its members who are customers of FPL who will be directly and substantially affected by the rates set in this proceeding. LULAC argues that in this proceeding FPL has requested to recover the costs of investments in fossil-fuel generation which will unnecessarily increase the rates paid by its members and increase the adverse effects of climate change. Finally, LULAC states that it has been granted intervention to litigate against FPL on behalf of its members in the Energy Efficiency Act goal-setting process.¹

In its Response, FPL acknowledges that based upon the facts stated in LULAC's petition LULAC appears to substantially meet the three-prong test for associational standing stated in Florida Home Builders v. Dept. of Labor and Employment Security (Florida Home Builders), 412 So. 2d 351 (Fla. 1982). However, FPL argues that LULAC has an affirmative duty, when challenged, to provide evidence supporting the allegations in its Petition establishing associational standing. FPL is challenging the facts that appear to support LULAC's associational standing. Therefore, citing Order No. PSC-2002-1260-PCO-EI,² FPL states that it

¹ Order No. PSC-2019-0293-PCO-EG, issued July 25, 2019, in Docket No. 20190015-EG, In re: Commission review of numeric conservation goals (Florida Power & Light Company).

² Order No. PSC-2020-1260-PCO-EI, issued September 13, 2020, in Docket No. 20020262, In re: Petition to determine need for an electric power plant in Martin County by Florida Power & Light Company and Docket No. 20020263-EI, In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power &

is entitled to conduct discovery and to present evidence, testimony, and argument regarding LULAC's associational standing.

Standard for Intervention

Pursuant to Rule 28-106.205, 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.

The test for associational standing was established in Florida Home Builders and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

Analysis & Ruling

Based upon a review of the materials provided by LULAC it appears that LULAC meets the three-prong associated standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, LULAC states that a substantial number of its members are customers of FPL who will be directly and substantially affected by the rates set in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within LULAC's general scope of interest and activity. LULAC is charged with educating and advocating for its members' economic empowerment. The rates set in this proceeding will directly affect the household budgets of LULAC's members who are FPL customers. As for the third prong of the associational standing test, LULAC seeks intervention in this docket to represent the interests of its members in seeking fair, just, and reasonable rates based on capital investments that are environmentally safe and prudent. The relief requested by LULAC is of a type appropriate for an association to obtain on behalf of its members.

Light Company (FPL objected to the associational standing allegations plead by the Florida Action Coalition Team (FACT) who had requested intervention and was granted the right to conduct discovery and have a hearing on the standing issue.)

Although LULAC has made allegations that support associational standing under Florida Home Builders, FPL has objected to the factual allegations supporting LULAC's associational status and is entitled to conduct discovery and to present evidence, testimony and argument regarding LULAC's associational standing. Therefore, LULAC's associational standing shall be an issue in this proceeding and LULAC shall have the burden of proof with regard to this issue. Due to the fact that LULAC's allegations do meet the associational standing requirements of Florida Home Builders, for the pendency of this proceeding LULAC shall be provisionally granted all the rights and privileges associated with full party status pending final resolution of its standing by the Commission. Pursuant to Rule 28-106.205, F.A.C., LULAC takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by the League of United Latin American Citizens is provisionally granted as set forth in the body of this Order. It is further

ORDERED that the League of United Latin American Citizens 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:

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Jordan Luebke
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Tallahassee, Florida 32301
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By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 20th day of April, 2021.



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

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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.