

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20210010-EI
ORDER NO. PSC-2021-0192-PCO-EI
ISSUED: May 26, 2021

ORDER GRANTING PETITION TO INTERVENE FILED BY
THE FLORIDA INDUSTRIAL POWER USERS GROUP

This docket has been opened pursuant to Subsection 366.96(7), Florida Statutes (F.S.), which requires the Commission to conduct an annual proceeding to determine an electric investor-owned utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. If the Commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. This matter has been scheduled for an administrative hearing beginning August 3, 2021.

The following five utilities were named as original parties when this docket was opened:

1. Florida Power & Light Company
2. Gulf Power Company
3. Tampa Electric Company
4. Duke Energy Florida, LLC
5. Florida Public Utilities Company

As set forth in the Order Establishing Procedure,¹ any person not listed immediately above who wishes to intervene as a party must file a Petition to Intervene in accordance with Rule 28-106.205, Florida Administrative Code (F.A.C.).

Petition for Intervention

On April 6, 2021, the Florida Industrial Power Users Group (FIPUG) filed a Petition to Intervene in this proceeding. FIPUG represents that it is an association consisting of large users of electricity in Florida and that its members rely on the availability of adequate, reasonably priced electricity to operate their businesses in an effective, efficient, and competitive manner. FIPUG alleges that the cost of electricity to those users is a significant portion of their overall costs of production and operation. FIPUG continues that the activities listed in the storm protection plans and the attendant costs of those activities as proposed by the participating utilities² will have a direct and substantial impact on the respective utilities' customers, including FIPUG members. FIPUG avers that the substantial interests of its members are directly impacted by this docket

¹ Order No. PSC-2021-0083-PCO-EI, issued February 17, 2021.

² FIPUG lists Tampa Electric Company, Florida Power & Light Company, Gulf Power Company, and Duke Energy Florida, LLC, in its Petition as the "affected utilities." FIPUG does not include Florida Public Utilities Company.

because the outcome could affect the cost of electric utility service and, therefore, their costs of operations. FIPUG seeks to intervene in the instant proceeding on behalf of its members to advocate and protect their substantial interests in ensuring that the storm protection plan cost recovery clause rates that will ultimately be approved and charged are fair, just, and reasonable. FIPUG states that it regularly represents its members in utility dockets to protect and promote their interests with respect to the cost of electricity.

FIPUG contacted counsel for Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company, Gulf Power Company, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs, and has represented that none of those parties object to FIPUG's intervention. No written response has been filed to FIPUG's Petition and the time for doing so has expired.

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.

To have standing, the intervenor must meet the three-prong standing test set forth in Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).³ 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.

³ Under Agrico, the intervenor must show that (1) he will suffer injury in fact which 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 which 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. 406 So. 2d 478 at 482. 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).

Analysis & Ruling

Based upon a review of the materials provided, FIPUG has sufficiently alleged associational standing in this proceeding. With respect to the first prong of the test set forth in Florida Home Builders, FIPUG asserts that a substantial number of its members are ratepayers of the utilities and will be directly and substantially affected by the decision in this case and the resulting impact on the rates they are charged. As to the second prong, the subject matter of this proceeding includes a determination of whether the rates to be charged by the utilities are fair, just, and reasonable, which is within FIPUG's general scope of interest and activity on behalf of its members. Finally, as to the third prong of Florida Home Builders, it is appropriate for FIPUG to seek and obtain relief on behalf of its members because these members are large consumers of electricity who will be affected by the decision in this docket. Accordingly, FIPUG's petition for intervention shall be granted as set forth herein. Pursuant to Rule 28-106.205, F.A.C., FIPUG takes the case as it finds it.

Based on the above representations, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Petition 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, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 26th day of May, 2021.



ANDREW GILES FAY

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.

SPS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 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.