

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI  
ORDER NO. PSC-2021-0255-PCO-EI  
ISSUED: July 13, 2021

ORDER GRANTING PETITION TO INTERVENE  
BY FLORIDA INTERNET AND  
TELEVISION ASSOCIATION, INC.

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. As part of its request, FPL is seeking to consolidate its rates with those of Gulf Power Company (Gulf), recently acquired by FPL's parent company. 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 June 30, 2021, the Florida Internet and Television Association, Inc. (FIT) filed a Petition to Intervene. FIT represents that it is an established association of broadband internet and cable television facilities providers. The members of FIT are Atlantic Broadband, Charter Communications, Inc., Comcast, Cox, and Mediacom (Members). FIT states that it regularly appears on behalf of its Members in judicial, regulatory, and legislative proceedings, and that its predecessor corporate entity, the Florida Cable Television Association, appeared before the Florida Public Service Commission (Commission) in numerous dockets.

FIT alleges that its Members are customers of FPL and/or Gulf and purchase electricity from FPL and/or Gulf (collectively "Companies") under rate schedules that are subject to review and approval by the Commission.

FIT further alleges that the Members attach their cables and other equipment to the Companies' poles as an integral part of their business and pay the Companies tens of millions of dollars annually in rent for these pole attachments. FIT avers that the amount it pays per pole attachment is determined by formulas that depend on data provided by the pole owner, "such as the utility's investment in pole and other plant, as well as data regarding the utility's rate of return, as well as the height and the number of the poles each utility has in service." Petition at 4. FIT posits that this case will directly impact the pole attachment rental rates charged by the Companies because findings here regarding the allocation of costs to pole related accounts, accounting for investment in pole hardening, and the projection of revenue from attachment rentals, will ultimately be reflected in the pole and cable rate formulas.

Because its Members share common impacts to their substantial interests, FIT asserts that it is the appropriate party to be granted party status and receive relief on behalf of those Members.

### Response

On July 7, 2021, FPL filed a Response to the Petition to Intervene. FPL does not object to the first basis on which FIT seeks intervention “as an association representing the interests of its members as retail electric customers of FLP and Gulf.” Response at 3. With respect to FIT’s second ground for intervention, FPL “recognizes that elements within the current case will have some bearing on future pole attachment rates, inasmuch as certain cost inputs borne by FPL’s electric customers inform the pole attachment rate setting process.” Id. at 4. However, FPL alleges that this second ground for intervention must be limited.

Specifically, FPL expresses concern that FIT “seek[s] to convert this proceeding into a prequel of a forthcoming pole attachment rate proceeding, for which the necessary rules and procedures have yet to be established.” Id. at 3. FPL points to various events as support for this observation and asks that the Commission exercise its authority “to properly define the scope of permissible discovery to best serve the purposes of the proceeding.” Id. at 5.

Counsel for FIT conferred with counsel for all parties prior to filing the Petition. FPL took no position pending review of the Petition and subsequently filed the above-discussed Response. All other parties either took no position or did not oppose FIT’s intervention. None of those other parties have filed a response and the time to do 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 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).<sup>1</sup> 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 and Ruling

Based upon a review of the Petition, it appears that FIT meets the associational standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, FIT asserts that all of its Members are located in the Companies' service areas and receive retail electric service from the Companies, for which they are charged applicable service rates. FIT further asserts that its Members pay rental rates for the right to attach cables and other equipment to poles owned by the Companies, and that the issues in this rate proceeding will directly affect the pole and cable rental rate formulas. Accordingly, FIT states that its members will be substantially affected by this Commission's determination in this rate and base rate consolidation proceeding.

With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FIT's general scope of interest and activity. FIT is an association which acts as an advocate on behalf of its Members in judicial, legislative, and regulatory proceedings. As for the third prong of the associational standing test, FIT seeks intervention in this docket to represent the interests of its Members in reliable electricity at reasonable rates and pole attachments at rental rates that are based on accurate inputs. The relief requested by FIT is of a type appropriate for an association to obtain on behalf of its members.

Because FIT meets the three-prong associational standing test established in Florida Home Builders, FIT's petition for intervention shall be granted. Pursuant to Rule 28-106.205, F.A.C., FIT takes the case as it finds it.

FPL's arguments that discovery propounded by FIT may stray beyond the scope of this proceeding will be entertained when and if they are raised by objections or appropriate motions filed with respect to specific discovery requests.

Based on the above representations, it is

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<sup>1</sup> 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, Florida Statutes, 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).

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ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Florida Internet and Television Association, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Internet and Television Association, Inc. 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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By ORDER of Chairman Gary F. Clark, as Prehearing Officer, this 13th day of July, 2021.



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GARY F. CLARK  
Chairman and Prehearing 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.

SPS

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.