

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 20210001-EI  
ORDER NO. PSC-2021-0411-PCO-EI  
ISSUED: November 1, 2021

ORDER GRANTING FLORIDA RETAIL FEDERATION'S  
MOTION TO INTERVENE

On October 12, 2021, the Florida Retail Federation (FRF) filed its Motion to Intervene (Motion). The Prehearing Conference in this docket was held on October 13, 2021, and the final hearing is scheduled for November 2-4, 2021.

FRF states that it is an established association with more than 8,000 members in Florida, a substantial number of whom are retail customers of Florida's investor-owned utilities (IOU), i.e., Florida Power & Light Company; Duke Energy Florida, LLC; Tampa Electric Company; and Florida Public Utilities Company. FRF further states that its members require safe, adequate, reasonably-priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership. Finally FRF states that it has been an active participant in numerous Commission rate cases and has previously been granted intervention in this docket. In its Motion FRF represents that the Office of Public Counsel does not object to its intervention and that Commission staff and Florida Power & Light Company take no position. Consistent with this representation, at the Prehearing Conference when asked if any party had an objection to FRF's intervention, no party raised an objection.

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).<sup>1</sup> Associational standing

<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, 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

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 on FRF's representations, it appears that FRF has met the associational standing requirements of Florida Home Builders. With respect to the first prong of the associational standing test, FRF asserts that a substantial number of its members receive electric service from Florida IOUs for which they are charged the applicable service rates. Accordingly, FRF states that its members will be directly and substantially affected by this Commission's determination of fuel and purchased power costs and charges that will be determined in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF's general scope of interest and activity. FRF is an association which acts as an advocate on behalf of its members, who are large electricity users. As for the third prong of the associational standing test, FRF seeks intervention in this docket to represent the interests of its members, as Florida IOU customers, in seeking reliable service at the lowest rates possible. The relief requested by FRF is of a type appropriate for an association to obtain on behalf of its members.

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

Based on the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by the Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Florida Retail Federation takes the case as it finds it. It is further

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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).

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:

Robert Scheffel Wright  
John T. LaVia, III  
Gardner, Bist, Bowden, Dee, LaVia, Wright & Perry, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone: (850) 385-0070  
FAX: (850) 385-5416  
[schef@gbwlegal.com](mailto:schef@gbwlegal.com)

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 1st day of November, 2021.



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ANDREW GILES FAY  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://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.

SBr

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-

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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.