

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy
Florida, LLC.

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0106-PCO-EI
ISSUED: April 19, 2024

ORDER GRANTING PETITION TO INTERVENE OF FLORIDA
RISING, INC. AND LEAGUE OF UNITED LATIN
AMERICAN CITIZENS OF FLORIDA

Duke Energy Florida, LLC (Duke or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Petition for Intervention and Response

On March 6, 2024, the League of United Latin American Citizens of Florida (LULAC) and Florida Rising, Inc. (Florida Rising), filed a Petition to Intervene (Petition) in this proceeding. On March 12, 2024, Duke file a Response to the Petition.

LULAC states that it is part of the largest and oldest Hispanic civil rights organization in the United States whose purposes include “advanc[ing] the economic condition, educational attainment, political influence, housing, health, and civil rights of Hispanic Americans through community-based programs operation through local councils across the nation.” LULAC states that it also focuses on environmental issues and has adopted positions on energy security and climate change.

LULAC alleges that a substantial number of its members reside in Duke’s territory, are customers of the Utility, and will be directly and substantially affected by the rates set in this proceeding. LULAC argues that the rate increase requested by Duke will impact the energy burden on the Hispanic community, implicating LULAC’s interest in the economic condition of its members and the Hispanic population of Florida, including those located in Duke’s territory. LULAC further argues that in this proceeding Duke has requested to recover the costs of investments in fossil-fuel generation, which will unnecessarily increase the rates paid by its members. Finally, LULAC states that it has been granted intervention in several prior dockets involving Duke.

Florida Rising states that it is a membership-based organization whose purposes include building “broader multiracial movements with individuals from historically marginalized communities to seize power and govern to advance social, economic, and racial justice.”

Florida Rising alleges that it has a substantial number of its members who reside in Duke's territory, are customers of the Utility, and who will be directly and substantially affected by the rates set in this proceeding. The effects on Florida Rising's members are alleged to be the same as those realized by LULAC; that is, higher utility prices, including those from development of more non-renewable energy generation.

Both LULAC and Florida Rising argue that the subject matter of this rate case is within the association's general scope of interest and activity in the economic and environmental well-being of their ratepayer members, and that the relief requested is of a type appropriate for the association to receive on behalf of its members.

In its Response, Duke did not object to the sufficiency of the standing allegations in the Petition. Duke requested only that the Commission allow it "to test Florida Rising and LULAC's associational standing in discovery."

Standards 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).¹ 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

¹ 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).

behalf of its members. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

Analysis & Ruling

LULAC and Florida Rising (collectively “Intervenors”) have made allegations in the Petition sufficient to meet the three-prong associated standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, Intervenors state that a substantial number of their respective members are customers of Duke 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 Intervenors’ general scope of interest and activity. Intervenors’ associational purposes include with educating and advocating for its members’ economic empowerment and environmental health. The rates set in this proceeding will directly affect the household budgets of Intervenors’ members who are Duke customers, and the rate increases being sought would be used in part to continue fossil fuel generation. As for the third prong of the associational standing test, Intervenors seek intervention in this docket to represent the interests of their members in seeking fair, just, and reasonable rates based on capital investments that are prudent. The relief requested by Intervenors is of a type appropriate for an association to obtain on behalf of its members.

Because the allegations in the Petition regarding associational standing are sufficient, the Petition shall be granted. Duke may conduct discovery regarding the allegations made by Intervenors in support of their standing. Intervenors bear the ultimate burden of proof on this issue.

Based on the foregoing, it is

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that the Petition to Intervene filed by Florida Rising and League of United Latin American Citizens of Florida is hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Rising and League of United Latin American Citizens of Florida take the case as they find 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:

Bradley Marshall
Jordan Luebke
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By ORDER of Commissioner Gabriella Passidomo, as Prehearing Officer, this 19th day
of April, 2024.



Gabriella Passidomo
Commissioner 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.