

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition for Approval of Arrangement to
Mitigate Impact of Unfavorable Indiantown
Cogeneration Power Purchase Obligation

DOCKET NO.: 160154-EI

FILED: June 30, 2016

**FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE**

Pursuant to sections 120.569, 120.57, Florida Statutes, and rules 25-22.039, 28-106.201 and 28-106.205, Florida Administrative Code, the Florida Industrial Power Users Group (FIPUG), through its undersigned counsel, files its Petition to Intervene. In support thereof, FIPUG states the following:

1. Name and address of agency. The affected agency is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

2. Name and address of Petitioner. The name and address of the Petitioner is:

Florida Industrial Power Users Group
c/o Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788

3. Petitioner's representatives. Copies of all pleadings, notices and orders in this docket should be provided 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

4. Notice of docket. Petitioner received notice of this docket by reading about the filing in the media. Petitioner subsequently reviewed the subject petition on the Commission's website.

5. Statement of Substantial Interests. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida, many of whom receive electricity from the Petitioner. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets.

6. FPL asks the Commission to find that it is prudent for FPL to pay \$451 million dollars for the Indiantown Cogeneration L.P. Facility ("ICL Facility"), a 330 MW coal-fired power plant with a qualifying cogeneration facility located on a 215 acre site in Indiantown, Florida, and to create a regulatory asset of nearly \$720 million dollars (\$451 million purchase price plus \$269 million income tax gross up) upon which FPL would earn its authorized rate of return of 10.5%. FPL asserts that certain contractual obligations (capacity payments and payments related to operations and maintenance expense) warrant Commission approval of the ICL transaction. In this proceeding, it is anticipated that the Commission will review the impacts of the proposed ICL transaction upon ratepayers, including FIPUG members. Numerous FIPUG members, as large retail customers of FPL, will be required to fund the costs of the proposed ICL Facility acquisition if FPL's petition is approved by the Commission. Consequently, FIPUG members will be directly and substantially affected by the outcome of these proceedings. FIPUG has associational standing and should be permitted to intervene.

7. FIPUG's interests are of the type that this proceeding is designed to protect. *See, Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). The purpose of the proceeding is to evaluate FPL's petition and evidence, determine the merits of FPL's requests, and decide whether or not FPL's ratepayers should pay for the acquisition of the ICL Facility. Thus, the purpose of the proceeding coincides with numerous FIPUG members' substantial interests, which is to ensure that the rates they pay to FPL are just and reasonable.

8. Disputed Issues of Material Fact. Disputed issues of material fact include, but are not limited to, the following:

- (a) Is the proposed purchase of the ICL Facility in the best interest of FPL's customers, including numerous FIPUG members?
- (b) What environmental liabilities, if any, are associated with purchasing the ICL Facility, a coal-fired power plant located in Indiantown, Florida.
- (c) How is the ICL Facility impacted by the Environmental Protection Agency's proposed "Clean Power Plan" and section 111(d) of the federal Clean Air Act?
- (d) How does the proposed purchase of the ICL Facility affect the fuel type diversity of FPL's generating fleet?
- (e) What are the plans of the current owners of the ICL Facility for the continued operation of the facility?
- (f) What are the plans of the current owners of the ICL Facility for compliance with the Environmental Protection Agency's proposed "Clean Power Plan" and section 111(d) of the federal Clean Air Act?
- (g) Is FPL's economic analysis of the purchase of the ICL Facility, and the assumptions made therein, reasonable?
- (h) How will the anticipated closure of the ICL Facility affect employment, local government revenues and operations of the ICL Facility's steam host?
- (i) Did financial projections used when the ICL purchase power agreement was approved in 1991 by the Commission prove to be accurate?
- (j) Can the ICL Facility continue to operate without the need for capital expenditures to attain existing or anticipated environmental compliance?
- (k) Given that the purchase power agreement has been in existence since 1991, approximately 25 years, and is due to expire in December of 2025, is there a need to adjudicate this case on an expedited basis?
- (l) FIPUG reserves the right to raise additional disputed issues in this proceeding.

9. Disputed Legal Issues. None at this time.

10. Statement of Ultimate Facts Alleged. Alleged ultimate facts include, but are not limited to, the following:

- (m) Whether FPL's proposed ICL Facility acquisition benefits ratepayers and is prudent?

Additional alleged ultimate facts may be identified in the course of these proceedings.

11. Rules and statutes justifying relief. FIPUG is entitled to relief under the following legal authorities: Sections 120.569 and 120.57(1), Florida Statutes, and Rule 25-22.039, Florida Administrative Code.

12. Position of FPL regarding FIPUG's petition to intervene. The undersigned that is authorized to represent that FPL takes no position at this time on FIPUG's petition to intervene.

WHEREFORE, FIPUG requests that the Commission enter an order allowing it to intervene and participate as a full party in this docket.

/s/ Jon C. Moyle

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

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail this 16th day of March, 2015, to the following:

Bryan Anderson
Assistant General Counsel - Regulatory
Will Cox
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
bryan.anderson@fpl.com
will.cox@fpl.com
(561) 304-5662
(561) 691-7135 (fax)

Kenneth A. Hoffman
Vice President Regulatory Affairs
Florida Power & Light Company
215 S. Monroe Street, Ste 810
Tallahassee, FL 32301
ken.hoffman@fpl.com
(850) 521-3919
(850) 521-3939 (fax)

J.R. Kelly, Esq.
Charles J. Rehwinkel
Office of Public Counsel
111 West Madison Street, room 812
Tallahassee, FL 32301
kelly.jr@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us

/s/ Jon C. Moyle

Jon C. Moyle, Jr.