

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery
Clause

DOCKET NO.: 20200092-EI
FILED: June 22, 2020

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

Petitioner, the Florida Industrial Power Users Group ("FIPUG"), pursuant to sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby files its Petition to Intervene, and in support thereof states as follows:

The Parties

1. Petitioner / Intervenor is:

Florida Industrial Power Users Group
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Facsimile: (850) 681-8788

For purposes of service of all pleadings, notices, and orders in this docket, Intervenor's mailing and e-service addresses are as follows:

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2. The affected agency is the Florida Public Service Commission ("Commission"), with a principal place of business at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

3. All of the affected utilities in this docket are public utilities seeking to recover incurred transmission and distribution storm protection plan costs in accord with section 366.096(7), Florida Statutes, and include but are not limited to, Florida Power & Light Company ("FPL"), Duke Energy Florida, Inc. ("DEF"), Tampa Electric Company ("TECO") and Gulf Power Company ("Gulf").

FIPUG's Substantial Interests

4. FIPUG is an association consisting of large users of electricity in Florida. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of operations and/or production. FIPUG members require adequate, reasonably priced electricity in order to compete in their respective markets and operate their businesses effectively and efficiently.

5. In this case, the Commission will consider the respective requests of public utilities to recover from ratepayers, including FIPUG members, projected and/or incurred transmission and distribution storm protection plan costs through an annual clause recovery proceeding in accord with section 366.096(7), Florida Statutes. These annual storm protection plan clause recovery requests to raise the rates of FIPUG members and other utility customers will have a direct and substantial impact on FIPUG members.

6. As discussed below, FIPUG has standing to intervene in this matter on behalf of its members. In *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982), the Florida Supreme Court set forth the requirements for an organization to demonstrate associational standing on behalf of its members in administrative

proceedings.¹ An organization must demonstrate that: 1) a substantial number of its members, although not necessarily a majority, are "substantially affected" by the agency action; 2) the subject matter of the case is within the association's general scope of interest and activity; and 3) the relief requested is of the type appropriate for the association to receive on behalf of its members. *Id.* at 353-54.

7. A substantial number of FIPUG members will be affected by the Commission's actions taken on the public utility storm protection plan petitions which seek to recover the costs for incurred transmission and distribution storm protection plan costs pursuant to section 366.096, Florida Statutes. As such, FIPUG members will be affected by the outcome of this case. *See Agrico Chem. Co. v. Dep't of Env't Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The subject matter of this docket is within FIPUG's general scope of interest and activity. FIPUG routinely appears on behalf of its members in cases concerning utility regulation, as the cost of electricity represents a significant portion of its members' production and/or operational costs. As such, the subject matter of the instant docket, i.e. consideration of utility projected or incurred costs for transmission and distribution storm protection plan costs are prudent, is within FIPUG's scope of interest and activity. The relief sought by FIPUG by way of the instant petition is of the type appropriate for it to receive on behalf of its members and pursuant to rule 28-106.205(1), Florida Administrative Code.

8. FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in this new annual clause docket. Because FIPUG's members are large consumers of electricity customers who will be affected by the outcome of this case, FIPUG's

¹ Although *Florida Home Builders Association* concerned standing in actions brought pursuant to section 120.56(1), Florida Statutes, its rationale has been extended to actions brought pursuant to 120.57, Florida Statutes, by the First District Court of Appeal's decision in *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982).

participation in this docket is appropriate to ensure that the storm protection plan recovery clause rates charged to its members for transmission and distribution storm protection plan costs are fair, just, and reasonable. FIPUG seeks to conduct discovery in this docket as warranted in its judgment, and to raise issues of material fact that may arise herein.

9. FIPUG's interests are of the type that this proceeding is designed to protect. *See, Agrico Chem. Co.*, 406 So.2d at 482. The purpose of this proceeding is for the Commission to consider, among other things, transmission and distribution storm protection plan costs are prudent in accord with section 366.096(7), Florida Statutes. The outcome of this proceeding will thus have significant implications for FIPUG members. Accordingly, FIPUG's interest in ensuring that its members are charged fair, just, and reasonable rates for these storm protection plan clause activities and expenditures are the type that this proceeding is designed to protect.

Notice of Proceeding

10. FIPUG received notice of this docket by a review of the Commission's website and an informal meeting with Commission staff and public utility parties to this docket.

Statement of Position

11. Public utilities seeking clause recovery of transmission and distribution storm protection plan costs through the storm protection plan clause recovery mechanism must meet their statutory obligations, including providing sufficient evidence to meet their burden of proof in this storm protection plan storm recovery matters.

Disputed Issues of Material Fact

12. Disputed issues of material fact may ensue and would include, but are not limited to the following:

- a. Whether the transmission and distribution storm protection plan costs for which the public utilities seek rate recovery in this proceeding are prudent in accord with section 366.096(7), Florida Statutes.

13. FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and initial and subsequent Orders Establishing Procedure in this docket.

Statement of Ultimate Facts Alleged and at Issue

14. Ultimate facts alleged and at issue include, but are not limited to, the following:
 - a. Whether the rates public utilities seek to recover from customers, including FIPUG members, for transmission and distribution storm protection plan costs in accord with section 366.096(7), Florida Statutes, are authorized and prudent.

Rules and Statutes Justifying Relief

15. The rules and statutes that entitle FIPUG to intervene and participate in this case include, but are not limited to:

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.96, Florida Statutes;
- d. Section 366.04(1), Florida Statutes;
- e. Section 366.06, Florida Statutes;
- f. Rule 28-106.201, Florida Administrative Code;
- g. Rule 28-106.205, Florida Administrative Code; and
- h. Rule 25-6.030, Florida Administrative Code.

Relief Requested

16. FIPUG requests that it be permitted to intervene as a full party in this docket.

Statement Required by Rule 28-106.204(3), Florida Administrative Code

17. Counsel for FIPUG has conferred with counsel for FPL, DEF, TECO, Gulf and the Office of Public Counsel and is authorized to represent that no party opposes 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 docket number 20200092-EI.

/s/ Jon C. Moyle

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ATTORNEYS FOR FLORIDA INDUSTRIAL
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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 22nd day of June 2020 to the following:

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