

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Duke Energy Florida, LLC's Petition
for a limited proceeding to approve Clean Energy
Connection Program and Tariff and Stipulation

DOCKET NO.: 20200176-EI
Filed: September 15, 2020

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

Petitioner Florida Industrial Power Users Group ("FIPUG"), pursuant to sections 120.569, 120.57(1), Florida Statutes and Rule 28-106.205, Florida Administrative Code, hereby files this petition to intervene in the above-styled proceeding and in support thereof states as follows:

The Parties

1. Petitioner Intervenor 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

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

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2. Petitioner Duke Energy Florida, LLC (“DEF”) is a Florida limited liability company with headquarters at 299 First Avenue North, St. Petersburg, Florida, 33701.

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

FIPUG’s Substantial Interests

4. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. 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. A significant number of FIPUG members purchase electric power from DEF.

5. In this case, the Commission will consider whether to approve DEF’s proposed Clean Energy Connection (“CEC”) solar program, and the associated proposed tariff and stipulation. The Commission's decision in this regard will affect DEF and its customers, including 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)

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).

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 approval or denial of DEF's petition in this case. Because this matter concerns the approval or denial of DEF's CEC, which DEF indicates in its petition will be available to industrial power users in DEF service areas, FIPUG members that are DEF customers will be substantially affected by the outcome of this case and the costs resulting therefrom. Further, upon information and belief, to the extent that the CEC is deficient operationally or in revenues, the general body of ratepayers, which includes FIPUG members, will be looked to in order to make up any deficiency, thus substantially affecting FIPUG members. *See Agrico Chem. Co. v. Dep't of Env't Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

8. Moreover, the subject matter of this case 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 costs. As such, the subject matter of the instant case, i.e. consideration of approval for a new solar power product and its attendant and resulting costs to industrial electricity customers, is well within FIPUG's scope of interest and activity.

9. Additionally, 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 section 366.06, Florida statutes. FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in this case. Because its members are industrial electricity customers who will be affected by the outcome of this case, FIPUG's participation in the case is appropriate to ensure that its members have a meaningful opportunity to review and understand aspects of

DEF's CEC and attendant tariff and stipulation, conduct discovery as warranted in FIPUG's judgment, and raise issues of material fact that may arise is appropriate.

10. Further, 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 the proceeding is to consider whether to approve or deny DEF's CEC, which DEF indicates in its petition will be available to industrial power customers. The outcome of the proceeding will thus have significant implications for FIPUG members that are DEF customers. Accordingly, FIPUG's interests in ensuring that the rates of its members who receive electrical service from DEF are fair, just, and reasonable, and that the potential ramifications of approval or denial of DEF's CEC and accompanying tariff and stipulation are duly considered, are of the type that this proceeding is designed to protect.

Notice of Proceeding

11. FIPUG received notice of DEF's petition and this docket by a review of the Commission's website.

Statement of Position

12. DEF must meet its burden of proof in this matter. FIPUG seeks to conduct discovery and reserves the right to modify its position based on information obtained during discovery.

Disputed Issues of Material Fact

13. Disputed issues of material fact have not yet been identified with certainty; however, whether DEF's CEC and attendant tariff and stipulation should be approved will be determined in the case. FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

14. Disputed legal issues include, but are not limited to, the following:

- a. Whether DEF met its burden of proof in this matter;

b. How approval of DEF's petition will affect DEF's customers, including FIPUG members; and

c. Whether and to what extent DEF's proposed Clean Energy Connection program and associated tariff and stipulation are in the public interest.

Statement of Ultimate Facts Alleged and at Issue

15. Ultimate facts alleged and at issue include, but are not limited to, the following:

a. DEF is required to meet its burden of proof in this matter;

b. Approval of DEF's petition may materially affect DEF's customers, including FIPUG members; and

c. Whether DEF's proposed Clean Energy Connection program and the associated tariff and stipulation are in the public interest.

Rules and Statutes Justifying Relief

16. 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 366.04(1), Florida Statutes;

d. Section 366.05(1)(e), Florida Statutes;

d. Section 366.06, Florida Statutes;

f. Rule 28-106.201, Florida Administrative Code;

g. Rule 28-106.205, Florida Administrative Code.

Relief Requested

17. 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

18. Counsel for FIPUG has conferred with counsel for DEF and is authorized to represent that DEF does not oppose 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 _____

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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 15th day of September 2020 to the following:

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