

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light
Company for Rate Unification and for Base
Rate Increase

Docket No. 20210015-EI
Date: March 1, 2021

**FLORIDA POWER & LIGHT COMPANY’S MOTION FOR LEAVE TO FILE A
RESPONSE TO THE PETITION TO INTERVENE OF FLORIDA RISING,
THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS, AND THE
ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA**

Florida Power & Light Company (“FPL”) hereby requests leave from the Florida Public Service Commission (“Commission”) to respond to the Petition to Intervene by Florida Rising, the League of United Latin American Citizens, and the Environmental Confederation of Southwest Florida (“Petition to Intervene”). In support of this Motion, FPL states:

1. On February 19, 2021, after 5:00 p.m. EST, Florida Rising, the League of United Latin American Citizens, and the Environmental Confederation of Southwest Florida served the Petition to Intervene upon FPL and the Office of Public Counsel. The Petition to Intervene seeks a Commission Order granting intervention in a case that has not yet been filed.

2. On February 22, 2021, the Petition to Intervene was assigned a document number and was made available on the Commission’s online docket.

3. Because the Petition to Intervene was served after 5:00 p.m. EST on February 19, 2021, and docketed on February 22, 2021, FPL believes a fair and reasonable application of Rule 28-106.205(1), F.A.C., would require a 7-day response by today, March 1, 2021. Nonetheless, in an abundance of caution, FPL has filed this Motion for Leave to File its Response to the Petition to Intervene and can represent that it has conferred with counsel for the putative intervenors and is authorized to represent that they do not oppose this Motion.

4. No party to this proceeding will be prejudiced by granting this Motion.

WHEREFORE, for the foregoing reasons, FPL respectfully requests that the prehearing officer grant this Motion and consider FPL's attached Response to the Petition to Intervene prior to entering an order on said Petition to Intervene.

Respectfully submitted this 1st day of March 2021.

FLORIDA POWER & LIGHT COMPANY

By: /s/ R. Wade Litchfield

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CERTIFICATE OF SERVICE
20210015-EI

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 1st day of March 2021, to the following parties:

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**EXHIBIT 1
TO
MOTION FOR LEAVE**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light
Company for Rate Unification and for Base
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Docket No. 20210015-EI
Date: March 1, 2021

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE TO THE PETITION
TO INTERVENE OF FLORIDA RISING, THE LEAGUE OF UNITED
LATIN AMERICAN CITIZENS, AND THE ENVIRONMENTAL
CONFEDERATION OF SOUTHWEST FLORIDA**

Florida Power & Light Company (“FPL”) hereby submits its response to the Petition to Intervene by Florida Rising, the League of United Latin American Citizens, and the Environmental Confederation of Southwest Florida (“Petition to Intervene”). In support, FPL states:

1. On January 11, 2021, FPL filed its Test Year Notification pursuant to Rule 25-6.140, Florida Administrative Code.
2. On February 19, 2021, after 5:00 p.m. E.S.T., Florida Rising, the League of United Latin American Citizens (“LULAC”), and the Environmental Confederation of Southwest Florida (“ECOSWF”) (together, “Petitioners”) served the Petition to Intervene upon FPL and the Office of Public Counsel.

I. Petitioners Must Demonstrate That They Have Associational Standing to Intervene.

3. As organizations that are seeking to represent the interests of their members, Petitioners must demonstrate that they have “associational standing” to intervene in this proceeding. To demonstrate associational standing, Petitioners must meet the following three-prong test established by the Florida Supreme Court: (1) that a substantial number of an association’s members may be substantially affected by the Commission’s decision in a docket; (2) that 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. *See Fla. Home Builders Ass’n v. Dep’t of Labor & Employment Sec.*, 412 So. 2d 351, 353-54 (Fla. 1982).¹ If allegations are insufficient to meet the *Florida Home Builders* test, then the petitioning association lacks standing to intervene. *See, e.g.* Order No. PSC-15-0295-PCO-EI (“the petition does not allege facts to show that [the petitioner’s] substantial interests will be affected by the outcome of this proceeding or that their environmental interests are those that this proceeding is designed to protect.”).

4. FPL acknowledges that on the face of its Petition to Intervene, LULAC and ECOSWF appear to substantially meet the three-prong *Florida Home Builders* test for associational standing. Nonetheless, FPL does not concede any evidentiary basis exists for the allegation purporting to support their standing and asks the prehearing officer to explicitly confirm that FPL retains its right, with respect to all three Petitioners, to conduct discovery and file appropriate motions and testimony addressing the evidentiary basis for their standing under Florida law. *See* Order No. PSC-02-1260-PCO-EI (holding that, when challenged, parties seeking intervention have an affirmative duty to prove, not just allege, standing).

II. The Overall Organizational Aims of Florida Rising, As Expressed in the Petition, Are Not Related to Issues within the Commission’s Jurisdiction and Therefore Fail the *Florida Home Builders* Test.

5. The overall organizational aims and interests expressed in support of Florida Rising’s intervention are not interests that will be affected by the proceeding. Petitioners state in the Petition to Intervene that Florida Rising is “a membership-based organization dedicated, under their articles of incorporation, to building broader multiracial movements with individuals from historically marginalized communities to seize power and govern to advance social, economic, and

¹ *Florida Home Builders* was a rule challenge proceeding but its holding was subsequently extended to section 120.57(1) hearings. *See Farmworker Rights Org., Inc. v. Dep’t of Health & Rehab. Servs.*, 417 So. 2d 753 (Fla. 1st DCA 1982).

racial justice.” Petition to Intervene at 5. The Petition to Intervene also notes that Florida Rising is “committed to climate justice and pushing for a regenerative future and a just transition that puts frontline communities as the center of energy policy, disaster response, food policy, and all climate change initiatives.” *Id.* These organizational aims are well outside of the rate-setting issues that will be decided in this proceeding and, moreover, relate to interests that are beyond the Commission’s jurisdiction. Because of this, Florida Rising, based on the assertions in the Petition to Intervene, fails the second and third prongs of the *Florida Home Builders* associational standing test.

6. Although the overall organizational aims of Florida Rising are beyond the scope of this proceeding, the organization has alleged in the Petition to Intervene that “[a] substantial number of Florida Rising’s members live in FPL’s service area and are customers receiving electricity service from FPL and will be substantially affected by the outcome of this proceeding.” *Id.* If this allegation can be substantiated, FPL does not object to individual members of Florida Rising who are FPL customers being granted intervention, so long as such intervention is limited to individual members of Florida Rising in their capacity as customers of FPL to address the rate-setting issues that are properly before the Commission. Stated differently, Florida Rising should not be allowed use the standing of individual members who are FPL customers to unlawfully broaden the scope of this proceeding to advocate issues for non-customers or to promote the larger social and policy goals espoused by the organization that are not within the Commission’s jurisdiction.

III. Petitioners Have the Obligation to Prove, not Just Allege, That They Have Standing to Intervene.

7. To the extent the Commission grants Petitioners' Petition to Intervene, Petitioners will retain the burden of proof regarding their allegations. As previously noted, the Commission has held that an order granting intervention based on the intervening party's *allegations* in support of standing is not definitive. In fact, objecting parties retain the right to test the factual basis of the allegations supporting standing, and it is the intervening party's burden to factually demonstrate its standing to intervene. *See In re: Petition to determine need for an electrical power plant in Martin County by Florida Power & Light Company*, Docket Nos. 020262-EI, 020263-EI, Order No. PSC-02-1260-PCO-EI (Sept. 13, 2002) ("parties to administrative hearings in Florida have an affirmative duty to prove standing – not just allege standing – when another party contests that standing.").

CONCLUSION

WHEREFORE, for the reasons expressed herein, FPL respectfully requests that the prehearing officer: (i) explicitly confirm that FPL retains its right, with respect to all three Petitioners, to conduct discovery and file appropriate motions and testimony addressing the evidentiary basis for their standing under Florida law; and (ii) limit any intervention on the part of Florida Rising to its individual members in their personal capacity as FPL customers and not for the social policy purposes set forth in paragraph 8 of the Petition to Intervene or purposes otherwise outside the Commission's jurisdiction and/or the scope of this proceeding.

Respectfully submitted this 1st day of March 2021.

FLORIDA POWER & LIGHT COMPANY

By: /s/ R. Wade Litchfield

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