

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City
Gas

Docket No. 20220069-GU

Served: September 1, 2022

**FLORIDA CITY GAS RESPONSE TO
THE FLORIDA INDUSTRIAL POWER USERS GROUP
PETITION TO INTERVENE**

Florida City Gas (“FCG”), pursuant to Rule 28-106.205(1), Florida Administrative Code (“F.A.C.”), and this Commission’s Orders Establishing Procedure Nos. PSC-2022-0262-PCO-GU and PSC-2022-0275-PCO-GU (“OEP”), submits this Response to the Florida Industrial Power User Group (“FIPUG”) Petition to Intervene. For the reasons explained below, FCG preliminarily opposes FIPUG’s Petition to Intervene and, to the extent the Prehearing Officer grants the Petition to Intervene, that the order granting the Petition be conditional and reserve FCG’s right to take discovery and file a subsequent motion and/or testimony challenging FIPUG’s standing under Florida law.

I. BACKGROUND

1. On March 29, 2022, FCG filed its Test Year Notification pursuant to Rule 25-7.140, F.A.C.
2. On May 31, 2022, FCG filed its Petition, Minimum Filing Requirements (“MFRs”), direct testimony, and exhibits in support of FCG’s proposed base rate increase and four-year rate plan. FCG also submitted certain MFRs that do not reflect the impact of the proposed Reserve Surplus Amortization Mechanism (“RSAM”), as well as a 2022 Depreciation Study, in the event

the Commission does not accept FCG's proposed four-year rate plan with RSAM.¹

3. On June 22, 2022, the Prehearing Officer issued the initial OEP No. PSC-2022-0262-PCO-GU, which established, among other things, the discovery procedures and controlling dates for this proceeding. On July 15, 2022, the Prehearing Officer issued the Revised OEP No. PSC-2022-0275-PCO-GU, which modified the dates for testimony and discovery timelines.

4. On August 25, 2022, FIPUG filed its Petition to Intervene.

II. STANDARDS FOR ASSOCIATIONAL STANDING

5. The test for associational standing was established 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 oft-cited *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). In order to demonstrate associational standing, the petitioner must establish the following elements: (1) 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 behalf of its members. *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.

¹ On August 16, 2022, FCG filed a Notice of Identified Adjustments that, if made, would net to an approximate \$160,163 decrease in FCG's requested incremental base revenue increase for the 2023 Test Year.

III. FIPUG HAS FAILED TO DEMONSTRATE STANDING ON THE FACE OF ITS PLEADINGS

6. In its Petition to Intervene, FIPUG asserts that it is an *ad hoc* association of industrial members and requests associational standing on behalf of its members. Accordingly, FIPUG has the burden to allege and prove up facts sufficient to demonstrate and meet the three-prong test established in *Florida Home Builders*. For the reasons explained below, FCG submits that FIPUG petition has failed to meet its burden under the three-part test for associational standing.

7. Historically, in its petitions to intervene in Commission proceedings, FIPUG has routinely represented that “FIPUG is an ad hoc association consisting of industrial users of electricity in Florida.”² Indeed, this statement is consistent with the fact that FIPUG is the Florida Industrial Power Users Group. Notwithstanding, FIPUG now represents in its pending Petition to Intervene that “FIPUG is an ad hoc association consisting of industrial users of electricity, and in many cases, natural gas, in Florida.” FIPUG Petition to Intervene at ¶ 4. The material factual and legal questions are whether a substantial number of FIPUG’s members are in fact customers of FCG that would be impacted by FCG’s proposed base rate increase.

8. In an effort to meet the three-prong test for associational standing, FIPUG goes on to generally aver that “each FIPUG member that is a natural gas customer of FGC will be affected by the outcome of this case.” FIPUG Petition to Intervene at ¶ 7. FCG submits this averment is facially insufficient to demonstrate standing because it fails to affirmatively state and identify whether any of its members are in fact industrial customers of FCG.

9. Moreover, there is no attempt by FIPUG to show that a “substantial number” of

² See, e.g., FIPUG petitions to intervene in Docket No. 20210015-EI available at: <http://www.psc.state.fl.us/library/filings/2021/02604-2021/02604-2021.pdf>; and in Docket No. 20220051-EI available at: <http://www.psc.state.fl.us/library/filings/2022/02814-2022/02814-2022.pdf>.

FIPUG's members are FCG customers as required under the first prong of the *Florida Home Builders* test for associational standing.

10. Further, certain of FCG's commercial and industrial customers are currently receiving service under negotiated rates that will not change or otherwise be impacted by FCG's proposed base rate increase. FIPUG has failed to identify any of its members or whether those members take service under FCG rate schedules that will be affected by this proceeding or under negotiated rates that will be unaffected and remain unchanged. FCG submits that such information is material to determining whether any of FIPUG's members will in fact be impacted by FCG's proposed base rate increase.

11. At this point, FCG and the Commission only have FIPUG's unsupported and untested assertions that a substantial number of FIPUG's members will be affected by FCG's proposed base rate increase. Granting intervention on the basis of such bare allegations creates an open invitation for organizations or special interests to petition to intervene in proceedings for the asserted purpose of representing "customer" interests, while being able to shield themselves in the cloak of anonymity.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, FIPUG's Petition to Intervene fails on its face to satisfy the requirements for associational standing as laid out in the *Florida Home Builders* decision. FCG opposes the granting of the Petition to Intervene based on the allegations contained therein, and respectfully requests that any granting of the Petition to Intervene be conditional and subject to FCG's right to propound discovery and file subsequent motions and/or testimony demonstrating that FIPUG has failed to establish associational standing under the *Florida Home Builders* three-prong test for associational standing.

Respectfully submitted this 1st day of September 2022,

FLORIDA CITY GAS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail to the following parties of record this 1st day of September 2022:

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