

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida City
Gas.

DOCKET NO. 20220069-GU
ORDER NO. PSC-2022-0377-PCO-GU
ISSUED: November 7, 2022

ORDER PROVISIONALLY GRANTING
FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE

Florida City Gas (FCG) filed its Minimum Filing Requirements (MFRs) on May 31, 2022, based on a historic test year that ended December 31, 2021, seeking a permanent rate increase. Discovery guidelines, hearing procedures, and controlling dates were established by the Order Establishing Procedure, Order No. PSC-2022-0224-PCO-GU, issued on June 22, 2022, as amended by Order No. PSC-2022-0275-PCO-GU, issued on July 15, 2022. This docket is currently scheduled for hearing on December 12-16, 2022.

Petition for Intervention

By petition dated August 25, 2022, the Florida Industrial Power Users Group (FIPUG) requests permission to intervene in this proceeding. FIPUG alleges a substantial number of FIPUG members will be affected by the Commission's action taken on FCG's Petition. FIPUG states that its members require adequate, reliable, and reasonably priced natural gas to compete effectively in their respective markets. FIPUG alleges that the cost of natural gas is a significant portion of its members' overall costs of production and operation. According to FIPUG, FCG's changes to FCG's rates, General Base Rate Petition, equity ratio, return on equity, reserve surplus amortization mechanism, and Storm Damage Reserve will have an impact on FIPUG members that receive natural gas and natural gas services from FCG. FIPUG also states that FIPUG routinely appears on behalf of its members in cases concerning utility regulation, as the cost of electricity and natural gas represents a significant portion of its members' production costs. FIPUG asserts that the subject matter of the instant docket, i.e., evaluation of FCG's request for Commission review and approval of increased base rates and related issues, is within FIPUG's scope of interest and activity. FIPUG asserts that it should be permitted to intervene so that it may advocate on behalf of its members' direct and substantial interests resulting from FCG's proposed rate increase.

In its Response in Opposition filed on September 1, 2022, FCG argues that because FIPUG failed to identify its members in its pleading, FIPUG's Petition to Intervene is facially insufficient to demonstrate standing. FCG states that, historically, FIPUG has routinely represented to the Commission that it is an association consisting of industrial users of electricity in Florida; now, FIPUG represents its members are also users of natural gas in Florida. FCG argues that granting intervention on the basis of FIPUG's "bare allegations" in FIPUG's petition would create "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." FCG states that due to FIPUG's failure to clearly

establish that a substantial number of its members are customers of FCG who would be substantially affected by FCG's proposed rate increase, any granting of intervenor status for FIPUG should be conditional, and that FCG should be permitted to propound discovery as well as file additional motions or testimony demonstrating that FIPUG has failed to establish associational standing.

Standard for Intervention

Pursuant to Rule 28-106.205, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the three-prong standing test set forth 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 *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).¹ Associational standing may be found where: (1) the association demonstrates that 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.

Conclusion

Taking the allegations in the petition to intervene as true and drawing all reasonable inferences in favor of the movant, FIPUG appears to meet the three-prong associational standing requirements of *Florida Home Builders*. Because FCG preliminarily opposes the motion and has raised disputed issues of material fact, the petition to intervene is provisionally granted, subject to FIPUG demonstrating standing at the final hearing.

¹ Under *Agrico*, the intervenor must show that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) the substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. The "injury in fact" must be both real and immediate and not speculative or conjectural. *International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). See also: *Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), *rev. den.*, 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Based on the above representations, it is

ORDERED by Chairman Andrew Giles Fay, as Prehearing Officer, that the Petition to Intervene filed by Florida Industrial Power Users Group is provisionally granted as set forth in the body of this Order. It is further

ORDERED that Florida Industrial Power Users Group takes the case as it finds it. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents that may hereinafter be filed in this proceeding to:

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

By ORDER of Chairman Andrew Giles Fay, as Prehearing Officer, this 7th day of November, 2022.



ANDREW GILES FAY
Chairman and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.