

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval of test year for
Rate increase.

DOCKET NO.: 20230023-GU
FILED: February 14, 2023

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

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com

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. The affected utility in this docket is Peoples Gas System, Inc. ("Peoples" or "PGS").

FIPUG's Substantial Interests

4. FIPUG is an ad hoc association consisting of industrial users of electricity and natural gas in Florida. The cost of electricity and natural gas constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity and natural gas in order to compete in their respective markets.

5. In this case, the Commission will consider PGS's request to increase rates paid by PGS customers, including FIPUG members receiving natural gas from PGS. Specifically, in its February 3, 2023 Test Year Notification letter to the Commission, PGS states that it expects to seek a base rate increase of between \$125 million dollars and \$135 million dollars. These PGS proposed changes to rate base and rates will have a direct and substantial impact on PGS's 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,

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).

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 action taken on PSG's forthcoming petition in this case. As such, each FIPUG member that is an customer of PGS 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).

8. Moreover, 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 and natural gas represents a significant portion of its members' production costs. As such, the subject matter of the instant docket, i.e. evaluation of PGS's upcoming request for Commission review and approval of its natural gas operational activities and request for a substantial base rate increase 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 rule 28-106.205(1), Florida Administrative Code, which addresses intervention. Thus, FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in this docket. Because its members are industrial natural gas customers that will be affected by the outcome of this case, FIPUG's participation in this docket is appropriate to ensure that the rates charged to its members who receive natural gas service from PGS are fair, just, and reasonable. Additionally, FIPUG seeks to conduct discovery in this docket as warranted in its judgment, and raise issues of material fact as 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 for the Commission to consider, among other things, PGS's proposed base rate increase to its customers, including FIPUG members. The outcome of the proceeding will thus have significant implications for FIPUG members that are natural gas customers of PGS. Accordingly, FIPUG's interest in ensuring that its members are charged fair, just, and reasonable rates for natural gas operations and services provided by PGS are the type of matters that this proceeding is designed to protect.

Notice of Proceeding

11. FIPUG received notice of this docket by an informal communication from PGS and a review of the PGS test year letter filed with the Commission on or about February 3, 2023.

Statement of Position

12. PGS 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 or otherwise.

Disputed Issues of Material Fact

13. Disputed issues of material fact include, but are not limited to, the following:
- a. Whether the increased base rates for which PGS seeks cost recovery are reasonable;
 - b. Whether the proposed changes in PGS's rate base are fair, just and reasonable;
 - c. Whether the proposed return on equity and capitalization structure of PGS as is, or may be proposed for adjustment, is fair, just and reasonable;

14. FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure to be issued in this docket.

Statement of Ultimate Facts Alleged and at Issue

15. Ultimate facts alleged and at issue include, but are not limited to, the following:
- a. The base rates PGS seeks to recover from its customers must be fair, just, and reasonable.

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, Florida Statutes;
- d. Section 366.041, Florida Statutes;
- e. Section 366.05, Florida Statutes;
- f. Section 366.06, Florida Statutes;
- g. Rule 28-106.201, Florida Administrative Code; and
- h. 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 PGS and is authorized to represent that PGS 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 docket number 20230023-GU.

/s/ Jon C. Moyle
Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850)681-3828
Facsimile: (850)681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com
Attorneys for Florida Industrial Power Users Group

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 14th day of February 2023 to the following:

Keith Hetrick
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
kherrick@psc.state.fl.us

Charles Rehwinkel
Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee FL 32399
rehwinkel.charles@leg.state.fl.us

Paula K. Brown
Peoples Gas System
Regulatory Affairs
P.O. Box 111
Tampa FL 33601
regdept@tecoenergy.com

Jeffrey Wahlen
Malcolm Means
Virginia Ponder
Ausley McMullen
123 South Calhoun Street
Tallahassee, FL 32301
jwahlen@ausley.com
mmeans@ausley.com
vponder@ausley.com

/s/ Jon C. Moyle, Jr.
Jon C. Moyle, Jr.