



SIERRA CLUB

March 25, 2024

Via electronic delivery

Adam Teitzman
Director, Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: **Docket No. 20240025**

Dear Mr. Teitzman,

Enclosed for filing on Sierra Club's behalf is the Petition to Intervene in the above referenced docket. Should you have any questions regarding the Petition, please contact me.

Sincerely,

/s/ Drew Mammel

Drew Mammel
Legal Assistant
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke
Energy Florida, LLC

Docket No. 20240025
Filed: March 25, 2024

SIERRA CLUB'S PETITION TO INTERVENE

Sierra Club respectfully petitions to intervene in the above-captioned proceeding pursuant to Sections 120.569, 120.57, Florida Statutes, and Rule 28-106.205 of the Florida Administrative Code. In support of this Petition to Intervene, Sierra Club states the following:

I. Agency Affected

1. The agency affected by this petition is the Florida Public Service Commission (“Commission”), which is located at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850.
2. The name of the utility affected by this petition is Duke Energy Florida, LLC (“Duke”).

II. Intervenor’s Name and Address

3. The Intervenor is Sierra Club. Sierra Club’s Florida Chapter is located at 415 1st Avenue N., St. Petersburg, FL 33701.
4. The names and contact information for proposed qualified representatives for Intervenor Sierra Club are:

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Patrick Woolsey
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5. Contemporaneous with the Petition to Intervene, Sierra Club is filing requests to designate Mr. Mendoza, Mr. Woolsey, and Ms. Amiel as qualified representatives for this matter.

III. Notice of Proceeding

6. Sierra Club received notice of this proceeding by searching open dockets on the Commission's website and reviewing Duke's Test Year Notification, which was filed with the Commission on January 31, 2024.

IV. Sierra Club's Substantial Interests

7. A proposed intervenor must allege that it has substantial interests that will be affected by the decision in a proceeding. Rule 28-106.205. Sierra Club has two general interests in this proceeding: First, Sierra Club and its Florida members have an interest in mitigating the harms to public health and the environment caused by Duke's burning of fossil fuels to generate electricity. Second, Sierra Club's members who are Duke customers have an interest in affordable rates for electric service. As explained below, both of these interests will be affected by the final decision in this proceeding.
8. Sierra Club is a national grassroots environmental organization founded in 1892 with more than 760,000 members nationwide and over 32,000 members in Florida, many of whom are Duke ratepayers.

9. Sierra Club's purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.
10. Sierra Club works throughout the country to promote a cleaner, healthier, and more sustainable natural environment by rapidly replacing fossil fuel generation with affordable carbon-free renewable generation and energy efficiency, among other initiatives to reduce greenhouse gas emissions. Sierra Club routinely engages at the state level and participates before public service commissions, including the Florida Public Service Commission, and in other forums to support strategies to cost-effectively and equitably achieve these goals.
11. An entity's legal standing to participate in a docket before the Commission is based on the Florida Supreme Court's test for associational standing, set forth in *Florida Home Builders v. Department of Labor and Employment Security*, 412 So.2d 351 (Fla. 1982), which in turn is based on the general principles of administrative standing from *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. Dist. Ct. App. 1981), rehearing denied, 415 So.2d 1359 (Fla. 1982). Sierra Club satisfies both of these tests for establishing standing.
12. Turning first to associational standing, *Florida Home Builders* provides that an association has standing to litigate on its members' behalf when: (a) the association demonstrates that the Commission's decision may substantially affect a substantial number of its members; (b) the subject matter of the proceeding is within the association's general scope of interest and activity; and (c) the relief requested is of a

type appropriate for the association to receive on its members' behalf. 412 So.2d; *see also Farmworker Rights Org. v. Dep't of Health and Rehabilitation Servs.*, 417 So.2d 753 (Fla. Dist. Ct. App. 1982) (extending the test in *Florida Home Builders* to hearings involving disputed issues of material fact under Section 120.57(1), Florida Statutes).

13. Sierra Club satisfies the first prong of this test because the Commission's decision in the present proceeding "may substantially affect a substantial number of" Sierra Club's members. Many of Sierra Club's 32,748 members in Florida are Duke ratepayers, and many are low- and moderate-income ratepayers, which makes them sensitive to increased and variable rates. Sierra Club has 314 members living in Citrus County alone, which is where Duke's aging Crystal River coal-burning power plant is situated. In addition to being concerned about their electricity rates, Sierra Club's members also care deeply about the many health impacts linked to exposure to pollution from coal plants, as well as the environmental pollution caused by coal plants.
14. Second, the subject matter of this proceeding is within Sierra Club's "general scope of interest and activity." Sierra Club regularly intervenes in public service commission dockets around the country in an effort to protect its members from environmental pollution and unduly high and inequitable electricity rates. Sierra Club also routinely advocates for utilities to replace older and dirtier fossil fuel generators with clean, renewable energy resources. Similarly, Sierra Club supports electrification measures, such as incentives for electric vehicle charging infrastructure, that enable its members to reduce their emissions of greenhouse gases and harmful air pollutants.

Therefore, Sierra Club has a longstanding interest in ensuring that the Commission “take[s] into account . . . renewable energy sources and technologies, as well as conservation measures,” as mandated by Florida law, in evaluating Duke’s rate case. *See* § 403.519, Florida Statutes.

15. Third, the relief Sierra Club requests “is of a type appropriate for the association to receive on its members’ behalf.” Sierra Club seeks an opportunity to participate fully in this docket and advocate for just and reasonable electricity rates for its members who live in Duke’s service territory, as well as a cleaner and healthier environment. Among other issues, Sierra Club expects to scrutinize Duke’s spending at the Crystal River coal-burning plant during the Test Year, as well as the costs and risks associated with operating that plant through and beyond the Test Year. Sierra Club expects to advocate for partial denial or conditional approval of Duke’s requests, and does not seek to obtain money damages. This relief is of a type that this Commission has repeatedly deemed appropriate for an association to receive on behalf of its members. Sierra Club has previously been granted permission to intervene and participate, on behalf of its members, in multiple proceedings before this Commission. *See, e.g.*, Order Granting Intervention to Sierra Club, No. PSC-2019-0409-PCO-EI (Fla. Oct. 8, 2019); Order Granting Intervention, No. PSC-2018-0344-PCO-EI (Fla. July 10, 2018); Order Granting Intervention; No. PSC-17-0179-PCO-EI (Fla. May 17, 2017).

16. Sierra Club also meets the two-prong test for administrative standing established in *Agrico*, 406 So.2d 478 (Fla. Dist. Ct. App. 1981), rehearing denied, 415 So.2d 1359 (Fla. 1982). This test requires (a) an injury in fact of sufficient immediacy to entitle

the petitioner to a hearing under Section 120.57, Florida Statutes; and (b) substantial injury of a type or nature that the proceeding is designed to protect.

17. Sierra Club satisfies the first prong of this test because Duke's Test Year Notification makes clear that it anticipates increasing its base rates from 2025 through 2027. The financial harm that higher monthly electricity bills impose on Sierra Club's members—and especially its low-income members—who live in Duke's service territory is “an injury in fact of sufficient immediacy.”
18. Second, as explained above, Sierra Club's members have substantial interests in avoiding unjust and unreasonable costs in their electricity bills, as well as avoiding environmental pollution and health risks from aging coal plants. Sierra Club will have an opportunity to safeguard these interests—and thereby avoid substantial injury to its members in Duke's service territory—by participating in this proceeding.
19. Accordingly, Sierra Club has standing to intervene in Duke's rate case on behalf of its many members in Duke's service territory, whether the Commission applies either the *Florida Home Builders'* associational standing or *Agrico's* administrative standing test.

V. Statement of Position

20. It is Sierra Club's general position that Duke must meet its burden of proof in this rate case and show that its Test Year spending, including generation costs, is just and reasonable. Sierra Club expects to develop its positions as the case proceeds, and reserves its right to modify its position in this proceeding based on information obtained via discovery or otherwise. Notwithstanding these caveats, and without limitation, Sierra Club expects to scrutinize Duke's Test Year spending at the Crystal

River coal units and whether any benefit to customers of retaining these units through the proposed 2034 retirement date is justified by the costs and risks of retaining them.

VI. Statement of Disputed Material Facts

21. Sierra Club cannot provide a complete statement of disputed issues of fact at this time, as discovery has not started and Duke has not met its minimum filing requirements or provided any pre-filed testimony as of the date of this petition. Sierra Club reserves its right to identify disputed facts based on information obtained via discovery in this proceeding or otherwise.

VII. Statement of Ultimate Facts

22. Sierra Club cannot provide a complete statement of ultimate facts at this time because discovery has not started and Duke has not met its minimum filing requirements as of the date of this petition. Sierra Club reserves its right to identify ultimate facts based on information obtained via discovery in this proceeding or otherwise.

VIII. Statement Required by Rule 28-106.204(3), Florida Administrative Code

23. Sierra Club has consulted with Duke, which takes no position but reserves the right to file a response after reviewing the petition to intervene. Sierra Club has also consulted with the Florida Office of Public Counsel and Earthjustice, which is representing Florida Rising, Inc. and the League of United Latin American Citizens of Florida. None of these parties has taken a position on Sierra Club's intervention in this case.

VI. Relief Sought

24. Sierra Club respectfully requests that the Commission enter an order granting it leave to intervene in the above-captioned docket, and further requests that the parties to this proceeding provide the undersigned with all notices, pleadings, testimony, discovery,

and other communications filed in the docket. Sierra Club's proposed qualified representatives for Sierra Club are willing to accept service via email.

RESPECTFULLY SUBMITTED this 25th day of March, 2024.

/s/ Tony Mendoza

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*Proposed Qualified
Representatives for Sierra Club*

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2024, I electronically filed a copy of the above Petition to Intervene with the Florida Public Service Commission. Copies were served by electronic mail to the following individuals involved in this proceeding:

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Major Thompson

Shaw Stiller

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