

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of FPL
SolarTogether program and tariff, by Florida
Power & Light Company.

DOCKET NO. 20190061-EI
ORDER NO. PSC-2019-0318-PCO-EI
ISSUED: July 31, 2019

ORDER GRANTING INTERVENTION

On March 13, 2019, Florida Power & Light Company (FPL) filed a petition for a new voluntary community solar program, called FPL SolarTogether, which will allow FPL customers to subscribe to a portion of new solar capacity built through the program and to receive a credit for a portion of the system savings produced by that solar capacity. Phase 1 of the program consists of five FPL SolarTogether projects that comprise a total of 20 solar power plants that are 74.5 megawatts each. This docket is currently scheduled for hearing on October 15-16, 2019.

Petition for Intervention

By petition dated April 5, 2019, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. FIPUG states that approval or denial of FPL's SolarTogether Program and associated tariff, which according to FPL will be available to industrial power users in FPL's service areas, will affect FIPUG members that are FPL customers. FIPUG further states that it appears on a regular basis before the Commission on behalf of its members in cases concerning utility regulation, as the cost of electricity represents a significant portion of its members' production costs. FIPUG alleges that it has an interest in ensuring that the rates of its members who receive electrical service from FPL are fair, just, and reasonable, and that the potential ramifications of approval or denial of FPL's SolarTogether Program and accompanying tariff are duly considered. FIPUG states that these interests are of the type that this proceeding is designed to protect.

FPL filed a response to FIPUG's petition on April 12, 2019, urging that it be denied. FPL states that FIPUG's petition should be denied as premature, since at the time of FIPUG's filing, this proceeding was on a Proposed Agency Action track.

Standards 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.

Based on the above representations, it appears that FIPUG has met the associational standing requirements of *Florida Home Builders* as stated above. FIPUG asserts that it has a substantial number of its members that are FPL customers and, as a result, those members are directly and substantially affected by the decision in this case. Further, keeping electricity costs as low as possible falls within the purview of FIPUG's general scope of interest and is the type of relief appropriate for FIPUG to receive on behalf of its members. FPL's objection that FIPUG's petition is premature became moot on July 5, 2019, when the Order Establishing Procedure was filed and this proceeding was placed on an administrative hearing track.

Therefore, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Florida Industrial Power Users Group is hereby 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 which may hereinafter be filed in this proceeding to:

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).

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By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 31st day
of July, 2019.



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

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 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.

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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.