

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0134-PCO-EI
ISSUED: April 16, 2021

ORDER GRANTING FLORIDA RETAIL
FEDERATION'S PETITION TO INTERVENE

On March 12, 2021, Florida Power & Light Company (FPL) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. As part of its request, FPL is seeking to consolidate its rates with those of Gulf Power Company (Gulf), which was recently acquired by FPL's parent company. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case is scheduled on August 16 through August 27, 2021.

Petition for Intervention

On March 10, 2021, the Florida Retail Federation (FRF) filed its Petition to Intervene (Petition). FRF states that it is an association with more than 8,000 members, many of whom are retail customers of FPL and the former Gulf Power Company (Gulf Power). FRF asserts that its interests are of the type that this proceeding is designed to protect since this proceeding is to evaluate FPL's request for a rate increase phased in over a four year period and determine if it has merit. Further, this case will decide whether to allow FPL and Gulf Power to consolidate the base rates and rate schedules of the two companies as well as how any rate transition mechanism should be fashioned for migrating Gulf Power customers. Therefore, the purpose of the hearing coincides with FRF's substantial interests, which are to ensure that its members receive reliable electric service from FPL and Gulf Power and that the rates they pay are just and reasonable. FRF represents that FPL, the Office of Public Counsel and Florida Industrial Power Users' Group do not object to its Petition and the League of United Latin American Citizens of Florida, the Environmental Confederation of Southwest Florida, Inc., and Florida Rising take no position. Consistent with this representation, no written objections to FRF's Petition have been filed and the time for doing so has expired.

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.

Analysis & Ruling

Based upon a review of the materials provided by FRF, it appears that FRF meets the associational standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, FRF asserts that a substantial number of its members are located in FPL's and Gulf's service areas and receive retail electric service from FPL and Gulf, for which they are charged FPL's/Gulf's applicable service rates. Accordingly, FRF states that its members will be substantially affected by this Commission's determination in this rate and base rate consolidation proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF's general scope of interest and activity. FRF is an association which acts as an advocate on behalf of its members on several social and economic issues, including electric utility rates. As for the third prong of the associational standing test, FRF seeks intervention in this docket to represent the interests of its members, as FPL and Gulf customers, in seeking reliable service and the lowest rates possible. The relief requested by FRF is of a type appropriate for an association to obtain on behalf of its members.

Because FRF meets the three-prong associational standing test established in Florida Home Builders, FRF's petition for intervention shall be granted. Pursuant to Rule 28-106.205, F.A.C., FRF takes the case as it finds it.

Based on the foregoing, it is

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).

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by the Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Florida Retail Federation 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:

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By ORDER of Chairman Gary F. Clark, as Prehearing Officer, this 16th day of April, 2021.



GARY F. CLARK
Chairman 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.

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.

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.