

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0139-PCO-EI
ISSUED: April 20, 2021

ORDER GRANTING FLORIDA RISING, INC.'S
PETITION TO INTERVENE

On January 11, 2021, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition between March 12 and March 31, 2021, for an increase in rates effective January 2022. 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. 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 February 22, 2021, Florida Rising, Inc. (Florida Rising) filed its Petition to Intervene (Petition). On March 1, 2021, FPL filed a Response to the Petition (Response). On March 8, 2021, Florida Rising filed a Reply to FPL's Response.¹ On March 30, 2021, Florida Rising filed an Amended Petition to Intervene (Amended Petition). On March 31, 2021, FPL filed a Response to the Amended Petition (Amended Response).

Florida Rising states that it is a membership-based organization dedicated, under its articles of incorporation, to building "broader multiracial movements with individuals from historically marginalized communities to seize power and govern to advance social, economic, and racial justice." Florida Rising argues that it is "committed to climate justice and pushing for a regenerative future and just transition that puts frontline communities as the center of energy policy, disaster response, food policy, and all climate change initiatives." Florida Rising alleges that its mission "to advance social, economic, and racial justice" includes advocating for fair, just, and reasonable rates for a substantial number of its members who live in FPL's service territory and receive their electric service from FPL. In addition to its members who are customers of FPL, Florida Rising states that the organization itself is also an FPL customer whose substantial interests will be directly affected by any rate increase which results from this proceeding.

Further, Florida Rising alleges that it and its members are also substantially affected by the fossil fuel generation costs that FPL is seeking to recover as prudent in this rate proceeding. Florida Rising states that it is authorized to represent its members' interests in legal actions and that the subject matter of this docket is within its scope of interest and activities. Finally, Florida Rising states that its members cannot be adequately represented by any other party and that its

¹ Rule 28-106.205, F.A.C., does not permit a reply to a response opposing intervention and Florida Rising's reply was not considered in the disposition of this request for intervention.

intervention will not unduly delay or prejudice the rights of other parties. Florida Rising represents that at the time of filing its Petition, it contacted the Office of the Public Counsel and FPL regarding their positions on intervention and both stated that they would take no position.

Finally, Florida Rising cites the grant of associational standing to other organizations² on the basis of potential financial impacts to the organizations' members in previous rate cases as support for its intervention as an association. For these reasons, Florida Rising argues that it has standing both as an individual under the two-prong standing test of Agrico Chemical Company v. Department of Environmental Regulation (Agrico)³ and associational standing under Florida Home Builders v. Dept. of Labor and Employment Security (Florida Home Builders).⁴

In its Response, FPL states that Florida Rising fails to meet the Florida Home Builders test for associational standing because the overall organizational aims and interests of Florida Rising are "well outside of the rate-setting issues that will be decided in this proceeding" and "relate to interests that are beyond the Commission's jurisdiction." FPL does not object to individual members of Florida Rising who are customers of FPL being granted intervention. However, FPL argues that Florida Rising should not be allowed to use the individual standing of its members who are customers of FPL to support associational standing. Finally, FPL argues that it has the right to test Florida Rising's allegations supporting standing via discovery and testimony addressing the evidentiary basis for Florida Rising's intervention and that Florida Rising has the burden of proof to factually demonstrate its standing to intervene.⁵

In its Amended Response FPL does not dispute that Florida Rising itself is an FPL customer, but reserves the right to test Florida Rising's allegations of associational standing in discovery should the Commission approve its intervention in that capacity.

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.

² AARP; Florida Retail Federation; South Florida Hospital and Healthcare Association; Federal Executive Agencies; Florida Industrial Power Users Group; and League of Women Voters.

³ Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

⁴ Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982).

⁵ Order No. PSC-2020-1260-PCO-EI, issued September 13, 2002, in Docket No. 20020262, In re: Petition to determine need for an electric power plant in Martin County by Florida Power & Light Company and Docket No. 20020263-EI, In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power & Light Company (FPL objected to the associational standing allegations plead by the Florida Action Coalition Team (FACT) who had requested intervention and was granted the right to conduct discovery and have a hearing on the standing issue.)

To have standing, an individual intervenor must meet the two-prong standing test set forth in 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) this substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses the nature of the injury. 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).

The test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. 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

In this case, Florida Rising has asserted standing both as an individual and as an association. Based upon a review of the materials provided by Florida Rising it appears that Florida Rising meets the two-prong standing test in Agrico for individual standing. This proceeding is to determine the just and reasonable electric rates to be charged by FPL. Florida Rising, as a customer of FPL, will be substantially and directly affected by the rates established by this proceeding. FPL does not contest that Florida Rising has individual standing in this proceeding. Therefore, Florida Rising itself as a customer of FPL meets the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, Florida Rising asserts that a substantial number of its members are located in FPL’s service area and receive electric service from FPL for which they are charged FPL’s applicable service rates. Accordingly, Florida Rising states that its members will be substantially affected by this Commission’s determination in this rate proceeding. FPL has conceded this point if, in fact, Florida Rising does have a substantial number of members who are FPL customers. With respect to the second prong of the associational standing test, Florida Rising alleges that it is an association which acts as an advocate on behalf of its members to advance social, economic, and racial justice. Florida Rising further argues that “economic justice,” in this instance, includes fair, just and reasonable rates for electric service, which is within the subject matter of this proceeding. Florida Rising’s suggested definition of “economic justice” and the assertion that such matters are within the subject matter of a rate case are not matters established as a matter of law in Commission

precedent and are specifically contested by FPL on both legal and factual grounds. As for the third prong of the associational standing test, Florida Rising seeks intervention in this docket to represent the interests of its members, a substantial number of whom Florida Rising claims are FPL customers, in seeking reliable service at the lowest rates possible. If Florida Rising is found to be authorized under its charter to advocate for fair, just, and reasonable rates for its members, and if a substantial number of its members are FPL customers, the relief requested by Florida Rising is of a type appropriate for the association to obtain on behalf of its members.

Because Florida Rising has made allegations sufficient to meet the two-prong standing test established in Agrico for individual standing, and FPL does not object to the validity of its allegations, Florida Rising's petition for intervention on an individual standing basis shall be granted. With regard to Florida Rising's petition for intervention as an association, FPL does not stipulate to the facts alleged, and contests whether the three-prong associational standing test established in Florida Home Builders has been met. There is no clear Commission precedent on Florida Rising's associational standing. Under these circumstances, FPL is entitled to conduct discovery and present evidence, testimony, and argument regarding Florida Rising's associational standing. Florida Rising's associational standing shall be an issue in this proceeding and Florida Rising shall have the burden of proof with regard to this issue. Pursuant to Rule 28-106.205, F.A.C., Florida Rising takes the case as it finds it.

Based on the foregoing, it is

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

ORDERED that Florida Rising, Inc. 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:

Bradley Marshall
Jordan Luebke
Earthjustice
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By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 20th day of April, 2021.



GARY F. CLARK
Chairman and Presiding 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.

SBr

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.