

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0180-PCO-EI
ISSUED: May 19, 2021

ORDER PROVISIONALLY GRANTING FLORIDIANS AGAINST
INCREASED RATES, INC.'S MOTION 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. 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 May 4, 2021, Floridians Against Increased Rates, Inc. (FAIR) filed its Motion to Intervene (Motion) in this case. On May 6, 2021, FPL filed its Response to FAIR's Motion and subsequently on May 7, 2021, filed an Amended Response to FAIR's Motion that included an attachment containing FAIR's Articles of Incorporation inadvertently omitted from its original filing.

FAIR states that it is a not-for-profit corporation organized to advocate on behalf of Florida consumers for lower electric rates in Florida. Organized March 16, 2021, FAIR alleges that while it is still growing, a "substantial majority" of its members are retail customers of FPL and will be directly and substantially affected by the Commission's decision in this case. FAIR contends that it has associational standing and has met the three-prong test of Florida Home Builders v. Dept. of Labor and Employment Security (Florida Home Builders), 412 So. 2d 351 (Fla. 1982). First, a substantial number of its members are directly affected by the agency's decision as ratepayers of FPL. Second, advocating for just, fair, and reasonable electric rates is FAIR's corporate purpose as clearly stated in its Articles of Incorporation.¹ And third, that the requested relief - fair electric rates - is of the type that is appropriate for the association to obtain on behalf of its members. Finally, FAIR represents that the Florida Retail Federation, Southern Alliance for Clean Energy, Daniel and Alexandria Larson, and the Federal Executive Agencies do not oppose its Motion. FAIR also represents that the League of United Latin American Citizens of Florida, Inc., Florida Rising, Inc., Office of Public Counsel, and Florida Industrial Power Users Group take no position on FAIR's Motion.

In its Amended Response, FPL argues that while alleging that it has a "substantial majority" of members who are FPL customers, FAIR has not disclosed the names of any of its

¹ ". . . to advance the welfare of the State of Florida, residential, business, institutional, and governmental customers served by investor-owned electric utilities whose rates are set by the Florida Public Service Commission, . . . by advocating for and providing analyses to the general public concerning State of Florida governmental policies and regulatory or administrative actions that will lead to retail electric rates that are as low as possible while ensuring safe and reliable electric service." FAIR Articles of Incorporation, Article II.

members nor stated how many members the organization actually has. FPL also argues that FAIR's principal place of business is Orlando and none of its directors or corporate officers live in FPL's service territory. Under these circumstances, FPL states that it objects to FAIR's intervention as an association. FPL further argues that it is entitled to test the allegations supporting standing made in FAIR's Motion and to conduct discovery, file appropriate motions, and file testimony addressing the evidentiary basis for FAIR's standing to intervene.

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.

The test for associational standing was established in Florida Home Builders 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 Chemical Company v. Department of Environmental Regulation (Agrico), 406 So. 2d 478, 482 (Fla. 2d DCA 1981).² 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 FAIR it appears that FAIR meets the three-prong associational standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, FAIR states that a substantial number of its members are customers of FPL who will be directly and substantially affected by the rates set in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FAIR's general scope of interest and activity as

² 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).

FAIR's corporate purpose is to advocate for just, fair and reasonable electric rates. As for the third prong of the associational standing test, FAIR seeks intervention in this docket to represent the interests of its members in seeking fair, just, and reasonable rates. Thus, the relief requested by FAIR is of a type appropriate for the association to obtain on behalf of its members.

Although FAIR has made allegations that support associational standing under Florida Home Builders, FPL has objected to the factual allegations supporting FAIR's associational status and is entitled to conduct discovery and to present evidence, testimony, and argument regarding FAIR's associational standing. Therefore, FAIR's associational standing shall be issues in this proceeding and FAIR shall have the burden of proof with regard to this issue. Due to the fact that FAIR's allegations do meet the associational standing requirements of Florida Home Builders, for the pendency of this proceeding FAIR shall be provisionally granted all the rights and privileges associated with full party status pending final resolution of its standing by the Commission. Pursuant to Rule 28-106.205, F.A.C., FAIR takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Motion to Intervene of Floridians Against Increased Rates, Inc. is provisionally granted as set forth in the body of this Order. It is further

ORDERED that Floridians Against Increased Rates, 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:

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By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 19th day of May, 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.