

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0184-PCO-EI
ISSUED: May 20, 2021

ORDER GRANTING IN PART AND PROVISIONALLY GRANTING IN PART
THE CLEO INSTITUTE INC.'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. 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 April 22, 2021, The CLEO Institute Inc. (CLEO Institute) and Vote Solar filed a joint Petition to Intervene (Petition). On April 27, 2021, FPL filed a Response to the Petition (Response), stating it objects to CLEO Institute's Petition, but does not object to Vote Solar's Petition. Vote Solar's petition to intervene will be taken up by separate order. CLEO Institute represents that the Office of Public Counsel, Florida Industrial Power Users Group, Florida Retail Federation, the League of United Latin American Citizens of Florida, the Environmental Confederation of Southwest Florida, Inc., Florida Rising, Federal Executive Agencies, and Southern Alliance for Clean Energy take no position, and D. Larson and A. Larson state that their position is "not opposed." No other written objections to CLEO Institute's Petition have been filed and the time for doing so has expired.

CLEO Institute states that it is a "nonprofit public benefit corporation that engages in charitable and educational activities under Section 501(c)(3) of the Internal Revenue Code, specifically to fight climate change and foster economic opportunity by promoting solar energy." CLEO Institute states that under its Articles of Incorporation, "all persons interested in the purposes of the Institute are eligible for membership if they are capable of contributing to the achievement of the purposes and to the effective operation of the organization." CLEO Institute states that its mission is to educate and empower communities to demand climate action, ensuring a safe, just, and healthy environment for all. CLEO Institute asserts that its purpose is to "advance environmental literacy and civic engagement by developing transformative initiatives that can be scaled and replicated." CLEO Institute claims that at least 10,000 of its dues paying members reside in Florida, with approximately 6,500 residing within FPL's service territory. CLEO Institute states that it is itself a rate-paying FPL customer with its principle place of business located in FPL's service territory.

Further, CLEO Institute alleges that it and its members are substantially affected by the subject matter of this rate proceeding. CLEO Institute claims that an objective of it and its members is to support equitable, non-partisan climate and resilience solutions by advocating for

and supporting innovative energy infrastructure projects. CLEO Institute argues that an increase in FPL rates would affect its operational costs, and as a result diminish its mission by “requiring a smaller share of its members’ dues and its contributors’ donations to be used for charitable and educational purposes.” CLEO Institute claims that a matter of significant importance to it and its members is the “potential economic consequences of FPL’s rate filing to low-income communities disproportionately impacted by climate change. . . .” CLEO further claims that it and its members will be impacted by FPL’s petition for a rate increase because the rate increase would impact FPL’s customers’ access to solar power and mitigation of climate change impacts.

CLEO Institute asserts that nothing in its governing documents or laws prohibits CLEO Institute from requesting relief on behalf of its members. CLEO Institute argues that pursuant to Ameristeel Corp. v. Clark¹ and Agrico Chemical Co. v. Department of Environmental Regulation² the instant proceeding is designed to protect CLEO Institute and its members. For these reasons CLEO Institute argues that it has standing to intervene “as full parties” in this docket.

In its Response, FPL states that CLEO Institute fails to meet the Florida Home Builders Association v. Department of Labor and Employment Security (Florida Home Builders)³ test for associational standing because the overall organizational aims of CLEO Institute 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 dispute the fact CLEO Institute is an FPL customer. However, FPL argues that any intervention on the part of CLEO Institute should be limited to its individual capacity as an FPL customer. Finally, FPL argues that it has the right to test CLEO Institute’s allegations supporting associational standing via discovery and testimony addressing the evidentiary basis for CLEO Institute’s intervention.

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, 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

¹ Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997).

² Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), reh’g. denied, 415 So. 2d 1359 (Fla. 1982).

³ Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982).

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, 412 So. 2d 351 (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. 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 CLEO Institute it appears that CLEO Institute 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. CLEO Institute, as a customer of FPL, will be substantially and directly affected by the rates established by this proceeding. FPL does not contest that CLEO Institute has individual standing in this proceeding. Therefore, CLEO Institute 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, CLEO Institute 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, CLEO Institute states that its members will be substantially affected by this Commission’s determination in this rate proceeding. With respect to the second prong of the associational standing test, CLEO Institute alleges that it is an association that acts as an advocate on behalf of its members who are low-income Floridians on the front lines of the ongoing climate crisis. CLEO Institute further alleges that its purpose is to “advance environmental literacy and civic engagement by developing transformative initiatives that can be scaled and replicated.” FPL argues that CLEO Institute fails the second prong of the Florida Home Builders associational standing test because CLEO Institute’s organizational interest or purpose is not related to the rate-setting issues that are the subject of this proceeding. As for the third prong of the associational standing test, CLEO Institute seeks intervention in this docket to represent the interests of its members, a substantial number of whom CLEO Institute claims are FPL customers, in seeking reliable service at the lowest rates possible. If CLEO Institute is found to be authorized under its charter to advocate on behalf of its members “who are low-income Floridians on the front lines of the ongoing climate crisis,” and if a substantial number of its

members are FPL customers, the relief requested by CLEO Institute is of a type appropriate for the association to obtain on behalf of its members.

Because CLEO Institute 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, CLEO Institute's petition for intervention on an individual standing basis shall be granted. With regard to CLEO Institute'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 CLEO Institute's associational standing. Under these circumstances, FPL is entitled to conduct discovery and present evidence, testimony, and argument regarding CLEO Institute's associational standing. For the pendency of this proceeding, CLEO Institute shall be provisionally granted all the rights and privileges associated with full party status as an association pending final resolution of its associational standing by the Commission. CLEO Institute's associational standing shall be an issue in this proceeding and CLEO Institute shall have the burden of proof with regard to this issue. Pursuant to Rule 28-106.205, F.A.C., CLEO Institute takes the case as it finds it.

Based on the above representations, it is

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

ORDERED that The CLEO Institute Inc.'s intervention as an association is provisionally granted as set forth in the body of this Order. It is further

ORDERED that The CLEO Institute 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:

William C. Garner, FL Bar # 577189
Law Office of William C. Garner, PLLC
On Behalf of The Cleo Institute Inc.
3425 Bannerman Road
Unit 105, #414
Tallahassee, FL 32312
Email: bgarner@wcglawoffice.com
Phone: 850.328.5478

By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 20th day of May, 2021.



GARY F. CLARK
Chairman and Presiding Officer
Florida Public Service Commission
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Tallahassee, Florida 32399
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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.

BYL

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.