

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to
approve large load tariff by Duke Energy
Florida, LLC

DOCKET NO.: 20250113-EI

FILED: March 23, 2026

**CITIZENS' RESPONSE IN OPPOSITION TO FIPUG'S
MOTION FOR PROTECTIVE ORDER**

The Citizens of the State of Florida ("Citizens") hereby file their Response to Florida Industrial Power Users Group's ("FIPUG") Motion for Protective Order from having to respond to standing related discovery. OPC respectfully requests that the Prehearing Officer issue an order denying FIPUG's motion to avoid responding to Citizens' First Set of Interrogatories (Nos. 1-11) and to produce all documents responsive to Citizens' First Request for Production of Documents (Nos. 1-6). As grounds therefore, Citizens state the following:

BACKGROUND

1. By Order No. PSC-2025-0446-PCO-EI, issued December 10, 2025, ("FIPUG Intervention Order"), FIPUG was granted conditional intervention to participate in the above docket.
2. Specifically, the FIPUG Intervention Order provides that "[b]ased on the foregoing, FIPUG has made allegations sufficient to meet the three-prong associational standing test established in Fla. Home Builders Ass'n v. City of Tallahassee, 15 So. 3d 612 (Fla. Dist. Ct. App. 2009) and its petition to intervene shall be granted **subject to proof of standing** or stipulations that there are sufficient facts to support all elements for standing. See Delgado v. Agency for Health Care Admin., 237 So. 3d 432, 437 (Fla. 1st DCA 2018) (proper pretrial stipulations to the facts supporting all elements of standing are binding upon the parties and the court). (Emphasis added.) The order does not provide a deadline for submission of proof of standing.
3. On December 1, 2025, OPC filed its Notice of Intervention which was acknowledged by Order No. PSC-2025-0447-PCO-EI, issued December 10, 2025.
4. OPC has yet to file an objection to FIPUG's conditional grant of intervention, however, OPC has not waived its right to object to this intervention.

5. Pursuant to the FIPUG Intervention Order’s requirement that intervention is granted subject to proof of standing, on February 24, 2026, OPC issued Citizens’ First Set of Interrogatories (Nos. 1-11) and Citizens’ First Request for Production of Documents (Nos. 1-6). Document No. 01251-2026, PSC Docket No. 20250113-EI, In Re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC. Similar discovery was served on other parties subject to a similar conditional grant of intervention. Document Nos. 01271-2026, 01272-2026, PSC Docket No. 20250113-EI, In Re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.
6. On the last day of the 20-day discovery response deadline for FIPUG to respond to Citizens’ First Set of Interrogatories (Nos. 1-11) and Citizens’ First Request for Production of Documents (Nos. 1-6) regarding standing, FIPUG failed to provide any responsive discovery and instead filed its Motion for Protective Order. Document No. 01575-2026, PSC Docket No. 20250113-EI, In Re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.

RESPONSE

1. Section 120.569(1), Florida Statutes, requires a party’s “substantial interest” be affected to participate in a proceeding. Therefore, public disclosure of the person whose substantial interest are affected is highly relevant and material to establishing standing to participate in a proceeding.
2. We are all familiar with FIPUG’s representation at the Florida Public Service Commission (“Commission” or “PSC”):

FIPUG: We are an *Ad Hoc* Group of Florida’s Largest Power Users. (Note the distinction: they are not the only large power users as there are other organizations that represent large power users, like FRF, and many users that are so large that they often (also) represent themselves, such as Walmart, PCS Phosphate, and NUCOR.)

The Rest of Us: But you are an *ad hoc* group, so who are you today, right now?

FIPUG: Why do you want to know? Are you trying to expose my *ad hoc* members to harassment and embarrassment?

The Rest of Us: No. We just want to know which customers are urging us to act on billion-dollar matters that impact tens of millions of Florida customers.

FIPUG: It's our policy not to reveal our members.

3. The above soliloquy is a summary of Commission interactions with FIPUG on the issue of standing. The secret nature of FIPUG's membership list is a longstanding issue as seen in a news article where reporter Lisa Zahner refers to FIPUG as a shadowy organization that opposed the Vero Beach utility purchase, resulting in the project's delay for many months. Lisa Zahner, *Large power users pose real threat to Vero Electric deal* (Aug. 02, 2018), [Large power users pose real threat to Vero Electric deal – Vero News](#).

The article highlights the normal course of business for FIPUG as an intervenor in many PSC cases as a secretive organization who was rarely challenged to file any evidence of standing by the utility or peers. There are significant harms to Florida's customers that arise from allowing a secret organization of significant power and influence like FIPUG to operate outside normal jurisdictional precedents unchecked. Appeals, judicial efficiency, the certainty of regulatory outcomes, and the public perception of this regulated industry are all threatened by *ad hoc*, shadowy membership groups to the extent that they are allowed. FIPUG's numerous assertions in the 20250011-EI Florida Power and Light Company rate case, and in this docket, that extra record identifications should form the basis for granting jurisdictional standing or provide an exception to standing are extremely troubling. Whether you attended a meeting, or did not attend, were invited to a meeting, but did not attend, had an office visit from FIPUG members or some other *ex parte* encounter, or had "historical knowledge," none of this adds a grain of sand towards meeting the elements of standing. Attorneys, judges, commissioners and regulators all clearly recognize that an organization cannot establish associational standing through extra record or *ex parte* meetings with undisclosed members of an *ad hoc* secret organization, and that such information cannot form the basis for a jurisdictional determination. However, the inescapable fact remains: FIPUG goes to great lengths to establish these situations and demands that anyone with this sort of extra record knowledge either be compelled to

act upon it, or are foreclosed from challenging FIPUG's standing due to "insider" information. These assertions are never explained by FIPUG.

4. Of course, extra record and *ex parte* meetings with members of a secret organization are (almost) completely irrelevant to the determination of associational standing. The only relevant issue involves the lengths to which FIPUG will go to establish and leverage these extra record identifications to avoid the *pro forma* demonstration of standing. That's why FIPUG's comment from its motion:

FIPUG reminded the Public Counsel during the February 24, 2026, meeting and discussion with staff, that members of OPC, after agreeing to honor confidentiality of the substantive matters discussed and the Identify (sic) of the meeting's participants, had previously attended multiple FIPUG meetings. In other words, OPC confidentially possesses knowledge of FIPUG members,

is so troubling.

FIPUG has raised this issue numerous times in hearings, and now in writing, and there is a lot to unpack. The Public Counsel has never been to a FIPUG meeting, though he has been repeatedly invited. The Public Counsel balks at the idea of meeting secretly with unknown persons in an out of town, offsite venue, with only a vague description of the purpose of the invitations. The Public Counsel was assured by FIPUG that there is nothing ethically to be concerned about because it is "...commonplace for members of the Commission to attend." The Public Counsel, nonetheless, has no knowledge if this is, in fact, true. Nor is it relevant to standing.

5. It is extremely odd that FIPUG would repeatedly state at hearings that OPC had attended FIPUG meetings and therefore knew who FIPUG was. Perhaps FIPUG fails to distinguish between its lobbying role and the responsibility for establishing legal standing to participate as an intervenor in front of a regulatory agency? The OPC categorically denies that the office has actual knowledge of the FIPUG membership. The office knows of a very small number of presumed members based on normal public interaction in Commission practice. The circumstances associated with past meeting attendance at the express invitation of counsel for the FIPUG group, for reasons solely for FIPUG counsel's personal and professional benefit, did not yield knowledge of the names of FIPUG members to the Public Counsel. The circumstances certainly did not

deliver those names to the Florida Public Service Commission which is the only entity that needs to know them for determining associational standing. OPC employees were asked not to disclose members. Meeting materials from those long-ago meetings were not shared with the OPC. In honoring the request, the current OPC staff member who attended the two meetings in 2021 and 2022 has assiduously and successfully endeavored to not retain any memory of the entities or representatives of entities at the meetings.

6. No member of the OPC has any knowledge of FIPUG's current membership based on attendance at the meeting. To the extent relevant, this fact can be confirmed under oath. Counsel for FIPUG should cease attempting to mislead the Commission by referring to these past meetings from many years ago. The Public Counsel has never attended a FIPUG meeting. The Public Counsel does not know who FIPUG is in this docket. Only the Prehearing Officer, as reflected in the evidentiary record, is required to have FIPUG establish each and every element of associational standing in compliance with the law and the conditional order in this docket.
7. "OPC has never before suggested any intervening party lacks standing." OPC attempted to conduct "capacity to settle" and standing questions in the FPL rate case through the taking of corporate representative depositions; however, FIPUG sought and received a blanket ruling on its requested protective order concerning every potential question contained in OPC's deposition notice, including the predicate questions for laying the foundation for taking those types of depositions. Order No. PSC-2025-0367-PCO-EI, Docket No. 20250011-EI, In Re: Petition for rate increase by Florida Power & Light Company.
8. Standing was a hotly contested issue in the FPL rate case, totally consuming the attention of the Commissioners in the Final Hearing, wherein one Intervenor, SACE, was removed from the case in the last moments of that hearing. Not only did OPC's Prehearing Statement position state that the Commission should apply the law for standing to the intervenors, but Commission Staff's Rate Case Summary stated that according to the legal precedent normally applied by the Commission, FIPUG, and other signatories, lacked standing:

FEL is correct in asserting that, under common law, unincorporated associations have no legal existence and cannot sue or be sued in their own name. This Commission has relied on that case law in dismissing a petition to intervene filed by an unincorporated association. Relying solely on that case law, the Commission may conclude that FIPUG and FEA lack standing. Document No. 15095-2025, PSC Docket No. 20250011, In Re: Petition for rate increase by Florida Power & Light Company (citations omitted).

9. Regarding FIPUG's comment: "Given the unprecedented nature of this development." FIPUG obsesses over the fact that the Office of Public Counsel has never opposed its standing before. That record remains unchanged. OPC will only oppose FIPUG's standing for as long as it continues to defy the conditional order and stubbornly refuses to respond to discovery concerning its membership, purported rate classes, capacity to settle, and the other standard jurisdictional requirements for associational standing in Florida.
10. FIPUG's assertions that standing, the requirements of the conditional order, and standing based discovery can be ignored by the Prehearing Officer based upon inconsistent statements of position by this Public Counsel or as they conflict with the actions of prior Public Counsel are spurious. Jurisdictional standing, especially once raised, cannot be ignored. Associational standing had its origins in creating the much needed protections for litigants during the Civil Rights Movement. This requirement, coupled with the Supreme Court's ruling that corporations are persons, lands us here. But FIPUG is not a corporation, and OPC is not the first to point that out. FIPUG appears to lack any indicia of proof of being a Florida Corporation. Its *ad hoc* membership does not appear to have a board of directors, bylaws, a website, charter, stated goals and purpose, or incorporation. It has no insurance and cannot be sued. But it can alter the economic fortunes of tens of millions of Florida customers. If the above facts remain true, then yes, OPC opposes FIPUG's standing, even though it may result in, as FIPUG suggests, a "winnowing" of litigants. There is both a biblical and an agricultural definition of winnowing, let's stick with agricultural: the process by which chaff, dirt and waste is removed from wheat. If that means that only Parties who meet the very low bar of establishing jurisdictional standing should participate in cases

impacting millions of Florida customers concerning the potential economic burdens of billions of dollars of rate increases, then yes, OPC supports “winnowing.”

11. Another unavoidable truth that FIPUG fails to grasp, is that even if everyone in Florida knew who FIPUG represented for the past 30 years, that fact alone does not come close to meeting the low evidential standard required to grant standing for an *ad hoc* group. It is FIPUG’s burden to establish standing. FIPUG’s assertion that it has been getting away with not establishing standing for years does not relieve FIPUG or the Prehearing Officer of the burden of proving-up and making a legally sufficient examination of the record evidence to establish all of the required elements of standing in this docket. It’s not unfair to have to comply with the legal requirements. This Commission has a recent history of removing intervenors without adequate standing expeditiously from the docket, particularly when a party objects to their participation. Which is commendable as it avoids the problematic removal of a party and the resulting prejudice to findings or confusion of the record.
12. Regarding FIPUG’s assertion that responding to any standing related discovery would result in annoyance, embarrassment, oppression, or undue burden or expense. FIPUG does not highlight which harm complying with the requirements of the conditional order or discovery requests would cause the largest power users in Florida, so we must examine this nonspecific assertion of these very specific harms individually.
13. In FIPUG’s Motion on page 7, FIPUG made a generalized claim that all the discovery was overbroad, immaterial, or irrelevant to the issue of standing and not reasonably calculated to lead to the discovery of admissible evidence and cited to Interrogatories No. 8 through 10 to support its generalized objection. Document No. 01575-2026, pg. 7, PSC Docket No. 20250113-EI, In Re: Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC. However, a review of each discovery request shows they are designed to elicit relevant information required by case law¹ to meet the three-prong test for associational standing. Associational standing requires

¹ 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, 481-482 (Fla. 2d DCA 1981).

that: (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. Requiring FIPUG to respond to 28 interrogatories including subparts and 6 production of document requests designed to determine the factual basis underlying FIPUG's assertion of associational standing is not unduly burdensome, irrelevant, immaterial, or oppressive, given that this information is only available from FIPUG and directly relevant to the associational standing criteria set out in law.

14. The following (OPC) discovery is narrowly tailored to establish the factual basis for FIPUG's assertion of associational standing by ascertaining organizational information:

Standing.

Interrogatory 1: In your Petition for Intervention, you contend FIPUG is an association of industrial and commercial users of electricity and natural gas in Florida. Please respond to the following regarding your associational standing:

Interrogatory 1(a): Please state whether your association is incorporated in the State of Florida?

OPC Summary: Is this question actionably annoying?

It may be annoying if the answer is false, but does it rise to the level that the Prehearing Officer has to protect the organization from the annoyance of complying with Florida Law on associational Standing?

Is this question embarrassing?

If this organization is not even incorporated under the laws of the State of Florida, yes, that's embarrassing, but is it actionably embarrassing to the secret membership of a nonexistent corporation?

Is this question oppressive?

It's a yes or no question, asked of a secret membership of an organization that alleges it represents some of the wealthiest, most powerful power users in Florida. Do they sound like a group that can be easily oppressed with such a foundational question as: do you legally exist as a corporation in the State of Florida?

Does this question suggest an undue burden or expense would be required to answer?

There are over 3.77 million active business entities registered in Florida. Is FIPUG one of them? Is FIPUG suggesting that the registration process is too onerous or expensive for its alleged members?

Incorporation appears to be the first foundational requirement for associational standing in Florida. It's not actionably annoying, embarrassing, oppressive, unduly burdensome or expensive for the alleged class. If the answer to this discovery question is no, then FIPUG lacks standing. As judicial efficiency goes, it is a very effective interrogatory.

Interrogatory 1(b): Please state whether your association has a website or websites and, if so, please provide the website(s) address(es)?

OPC Summary: Even the most recently created businesses have websites, and many are not very effective, but it's an indicator that you have a presence. This appears to be very low hanging fruit to establish you have a legal presence in Florida. The yes or no question could not be easier, and it's not actionably annoying, embarrassing, oppressive, unduly burdensome or expensive for the alleged class. If the answer to this discovery question is no, then FIPUG has no visible internet presence other than articles like the ones cited above and prior dockets where almost no one previously challenged its standing. The Vero news article comments on these very issues.

Interrogatory 1(c): Please state whether your association has members?

OPC Summary: This appears to be the most basic foundational requirement for associational standing in Florida-more than two customers whose membership.... The question is not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. If the answer to this discovery question is no, then FIPUG lacks standing. That makes it an appropriate question.

Interrogatory 1(d): Please identify the officers and/or leaders of your

association and their positions?

OPC Summary: This is a foundational requirement for associational standing in Florida that distinguishes corporations from small club or an *ad hoc* gathering of likeminded individuals. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. Upon information and belief, FIPUG does not have any of these persons as the organization is designed to be so secretive that no one needs to be responsible for the decisions or actions of its membership. If the answer to this discovery question is no, then FIPUG is not a corporation and fails to meet the requirement for actual associational standing.

Interrogatory 1(e): Please explain the purpose of your association?

OPC Summary: It's a safe bet that the *ad hoc* organization exists to promote their interests, year by year, case to case, utility to utility, issue to issue. So it changes, but it does not really matter because FIPUG is not going to talk about it. This is another foundational requirement for associational standing in Florida and it's tied to the required articulation of the harm or impact of the issues in the docket. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. If the answer to this discovery question is vague, then FIPUG has its job cut out for it in articulating the harm it is intervening to prevent.

Interrogatory 1(f): Please explain the general scope of interest and activities of your association?

OPC Summary: Without corporate officers and bylaws, who decides the issues? The scope of interest and activities of an organization are foundational requirements for associational standing in Florida. While FIPUG would rather not share this information, it's not otherwise actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. Meetings are expensive, answers are not. If the answer to this discovery question is that its FIPUGs policy not to discuss these details, then not only does FIPUG lack standing, but this secrecy undermines the public trust and the very purpose of having a statewide regulatory regime. Why are you here and what do you do should not be prohibited questions for an intervenor in matters of this sophistication and significant customer impact.

Interrogatory 1(g): Please explain how a person or corporation joins your association?

OPC Summary: If anyone can form a secret organization of some of the most powerful companies who use electricity and gas in Florida, then what makes FIPUG special? FIPUG's support for this one should not be "trade secret." Think "Boy Scouts of America." How do you get involved in Scouting? The information is on their websites. Fairly basic question, but that assumes FIPUG makes it this far. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. If the answer to this discovery question is "send a check," that does not help FIPUG's standing argument.

Interrogatory 1(h): What is FIPUG's preferred name for its members such as patrons, members, associates, etc..., if any?

OPC Summary: Unless it's members of FIPUG for this docket, we've got no idea. Scouts are Scouts. AARP members are either AARP or retired customers. It could help FIPUG's cause if there was a name for its *ad hoc* secret membership. However, it's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class to provide the name.

Interrogatory 2: Please identify some of your members that are within Duke Energy Florida's (DEF) territory taking electricity from DEF and have specifically chosen to participate in this docket.

OPC Summary: Who are you and why should you be involved in this billion dollar matter that will impact millions of Florida customers?

FIPUG must have a demonstrable, legally supportable and substantial interest to be involved in litigation that has such a significant impact on so many citizens. FIPUG asserts that its ok so long as the utility knows, even if the rest of us do not. Who are you is the first question to be answered. Why are you here is the second. FIPUG's preferences do not trump decades of case precedent or statute. Nor does waiver satisfy the requirements of the conditional order. This appears to be a fundamental requirement, and not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. The truth is, none of us know who FIPUG is in this docket. To the statutory customer advocate, FIPUG is an opaque unknown. If the answer to this discovery question is that it is against FIPUG's policy to identify our membership, then FIPUG lacks standing.

Interrogatory 3: Please identify the total number of members of FIPUG as of November 25, 2025, and whether that member count has changed since the date you filed your petition, and if it changed, by how much?

OPC Summary: Because we do not know who FIPUG is, or what interests it represents, how do we keep track? What if FIPUG gains a large load tariff data center as a customer? Does that change its interests, whatever they are? Note: OPC has reasons to question these issues, but those details are not required here.

The authority to represent a specific customer or customers should remain constant throughout a proceeding and so should their purpose. If we hope to resolve cases by alternative means, which is always OPC's goal when it is within the public interest and promotes a positive result for all customers, then these questions are relevant to standing and to capacity to represent parties when settling dockets. This discovery is not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class.

Interrogatory 4: Please explain the type of relief the association is seeking in this docket for the members of the association receiving service from DEF within DEF's territory?

OPC Summary: This is a basic, fundamental question that is easy to answer. Its specificity defends itself from being overly broad. It's part of the required showing for standing in Florida. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. If the answer to this discovery question is that it is not FIPUG's policy to answer detailed questions about our interests, then FIPUG lacks standing.

15. The following interrogatories are relevant information to ascertain if associational standing cannot be established, would individual FIPUG member qualify for individual standing and if confidentiality is claimed for the membership the basis of such claim:

Interrogatory 5: Please identify and explain how specific members of your association will be substantially affected by actions of the Commission regarding DEF's petition in this matter?

OPC Summary: If a customer wants FIPUG to represent only its interests, then FIPUG identifies itself as the customer by name and provides the requisite information to meet individual standing by answering these questions. These are foundational requirements for individual standing in Florida. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. There's no reason not to answer.

Interrogatory 7: To the extent FIPUG is claiming individual standing on behalf of a FIPUG member who is a DEF customer(s), please identify the individual DEF customer(s) upon which such claim is based.

OPC Summary: Who are you is a foundational requirement for individual standing in Florida. It allows FIPUG to operate within the known boundaries of the law by representing actual customers. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. There's no reason not to answer.

16. Another Interrogatory that FIPUG refuses to answer is:

Interrogatory 6: If FIPUG claims its membership is entirely confidential, please identify the law, rule, statute, or case law [or authority] upon which FIPUG is relying that authorizes it to seek associational standing in an administrative proceeding without identifying the specific person(s) and/or member(s) impacted by the agency's possible action.

OPC Summary: FIPUG cannot simply not answer and issue a general averment. A motion for protective order must be pled with specific particularity, which it was not, and a motion does not allow a litigant to sidestep discovery, especially when the questions pertain to jurisdictional standing of a secretive organization, with secret membership, is not incorporated, has no website, officers, stated purpose, etc. A blanket refusal that it is against their policy to divulge such information should be treated as deliberate noncompliance with the conditional order and known legal requirements of Florida law. It's not actionably annoying, embarrassing, oppressive, or unduly burdensome or expensive for the alleged class. FIPUG has not requested nor produced support for an exception – not that an exception or waiver to fundamental jurisdiction can be granted. No actionable grounds exist to support FIPUG's requested relief.

17. The related requests for production are a necessary part of the required inquiry to demonstrate standing. They are not actionably annoying, embarrassing, unduly burdensome, or expensive for the alleged class.

Standing.

Request for Production 1: Please provide documentation of FIPUG's incorporation in the State of Florida.

Request for Production 2: Please provide a copy of any list of membership for FIPUG that existed as of November 25, 2025, and as of today.

Request for Production 3: Please provide copies of any articles of incorporation, by-laws, or other similar type documentation used to govern FIPUG, the association.

Request for Production 4: If FIPUG is an *ad hoc* organization whose membership varies from docket to docket, utility to utility, year to year, etc., please provide documentation of participation for representative members of each rate class member in this specific docket.

Request for Production 5: Please provide some documentation for each FIPUG member that currently takes electric service in the DEF territory.

Request for Production 6: Please provide any documentation that is responsive to the First Set of Interrogatories to FIPUG.

OTHER ERRORS ASSERTED IN FIPUG'S MOTION

1. Factual Overview, first paragraph "The Prehearing Officer Granted FIPUG's petition to intervene..." This is a mischaracterization of the Order. The Order granted conditional intervention contingent upon FIPUG's satisfying the factual and legal requirements to establish associational jurisdiction.
2. "Gotcha!" Serving standing discovery is not a gotcha, but a mundane jurisdictional requirement common to all cases in Florida, as provided in the Order granting conditional standing.
3. FIPUG respectfully requests "Public policy considerations balancing the legal standing position taken by Public Counsel versus public policy interests of a full, fair, and efficient presentation and resolution of issues before the Commission as described above." There is no balancing test for standing. It has been suggested that it is a political determination. It is not. FIPUG's conditional standing is conditional until standing is proven. Motions to oppose jurisdictionally required discovery is not judicially efficient. Motions to compel standing discovery are not judicially efficient. Standing based discovery is required for full and fair determinations at hearing and the avoidance of further appeals.

OPC's concerns about FIPUG's standing were raised by the propensity of settlement signatories in previous cases to overstate or over-suggest the total number of customers and the variety of rate classes of customers that they represent, or to decline to answer any such inquiries, whatsoever. A primary goal is to avoid a repeat

of the FPL Final Hearing, where a myriad novel theories were suggested to sustain standing for organizations who appeared to have failed to put forward the requisite proof, which, combined with the last minute elimination of an intervenor, all lead to a costly, but inevitable appeal. All stemming from the refusal of a couple of signatory organizations who prioritize the secrecy of its members over compliance with conditional intervention orders and the easy to establish jurisdictional threshold requirements.

FIPUG's assertions that extra record identifications should form the basis for granting jurisdictional standing or provide an exception to standing remains baffling. FIPUG's stubborn adherence to total secrecy is indirect conflict with the order, legal requirements. Government in the Sunshine laws, an efficient resolution of this docket, and maintaining dignity and trust in our public institutions. FIPUG's motion to avoid standing related discovery was not supported by material facts, would not be supported by the application of existing law to those facts, and is designed to frustrate OPC's discovery with an unsupported claim to delay the proceeding and the production of evidence.

FIPUG'S PROPOSED STIPULATIONS

1. In its Motion on page 3 and 4 FIPUG claims that it attempted to resolve OPC discovery requests by proposing Type 2 stipulations with Duke Energy Florida ("DEF") as follows:

Good morning,

DEF and FIPUG have reached the following stipulations that will hopefully resolve the standing issue (Issue B in Staff's issues list):

- 1. FIPUG has intervened in DEF rate cases for many years.*
- 2. In the last DEF rate case, FIPUG intervened, played an active role in the case, and was a party to the rate case settlement agreement.*
- 3. During DEF's most recent rate case, the company was informed that a number of large load customers of DEF were represented by FIPUG.*
- 4. Those large load customers represented by FIPUG in DEF's rate case are current customers of DEF.*

I am writing to confirm your position on the above stipulations – please advise.

The parties to the so-called Type 2 stipulations do not understand what constitutes a Type 2 stipulations – apparently confusing the stipulation with the non-unanimous settlement that FIPUG and counsel for PSC Phosphate entered into with another utility. Even were the statements above valid stipulations – which they are not -- none of these bare assertions provide the factual basis for association standing for intervention in this docket or directly respond to any of the interrogatories or production of document requests propounded on FIPUG.

As a threshold matter, the proffered Type 2 “stipulations” are not recognized in Commission practice as stipulations. A stipulation must evince affirmative agreement by all parties or non-objection to the proposed stipulation by the remaining parties who do not affirmatively concur in the language. The OPC’s affirmative objection to these proffered “facts,” nullifies any effect that FIPUG might have intended. Accordingly no stipulation whatsoever exists on FIPUG’s standing. Over a several year period, the Commission has established a definition of what constitutes a Type 2 stipulation. For example in Order No. PSC-2025-0436-FOF-EI, issued November 24, 2025, in Docket No. 20250001 (“2025 Fuel Order”),² at 2 (footnote 1), the Commission defines a Type 2 stipulation thus:

A Type 2 stipulation occurs on an issue when the utility and staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

A properly phrased, proposed stipulation would be phrased in this manner.³ The issue of standing cannot be resolved as prescribed by the Intervention Order with these proposed stipulations.

² *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

³ Were the OPC to **have** facilitated or otherwise enabled a Type 2 stipulation on FIPUG standing it would have been accompanied by a statement to this effect (as reflected in the 2025 Fuel Order at 2-3) phrased thus:

OPC takes no position on these issues nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of these issues. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

2. Proposed stipulations 1 and 2 are irrelevant to establish associational standing in this docket. Past participation in other dockets before the Commission does not establish the right to participate in future Commission dockets, standing must be proven in each docket. Section 120.569(1), Florida Statutes, requires a party's "substantial interest" be affected to participate in a proceeding. Therefore, public disclosure of the person whose substantial interest are affected is highly relevant and material to establishing standing to participate in a proceeding.
3. Proposed stipulation number 3 is an assertion by FIPUG to DEF that a number of its customers were DEF large load customers, which is the same as the assertions made in FIPUG's petition to intervene that remain subject to proof under the Commission's Order.
4. Again, proposed stipulation number 4 is also a mere assertion by FIPUG that it represents unnamed large load DEF customers unless FIPUG disclosed to DEF who those "members" are by name. If FIPUG disclosed its associational members to DEF, a party to this proceeding, then FIPUG is obligated through discovery to provide that information to OPC.
5. FIPUG did not make any specific objections to any of the interrogatories or productions of documents.

ARGUMENTS IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER

1. Instead of filing general and specific objections, FIPUG filed a Motion for Protective Order that fails to establish good cause why it should be granted for the reasons stated below by OPC that refutes FIPUG's assertions.
 - a. FIPUG's Motion for Protective Order relies on following arguments that are without merit: (1) OPC failed to timely object to FIPUG's Motion for Intervention; (2) the discovery failed to meet the undue burden criterion, the undue expense criterion, and/or annoyance criterion; (3) discovery is a fishing expedition; and (4) balancing of public policy considerations.

No such statement of facilitation was or is made in this case. The OPC has consistently accompanied its facilitation of Type 2 stipulations with such statements, modified only to accommodate others like FIPUG and PCS Phosphate to similarly facilitate a Type 2 stipulation.

- b. FIPUG’s first argument that OPC failed to timely object to FIPUG’s Motion for Intervention is not dispositive. Rule 28-106.205(1), F.A.C., provides that “[t]he parties **may**, with 7 days of service of the motion, file a response in opposition.” (Emphasis added). The word “may” in the rule for filing a response is conditional, not mandatory. OPC has chosen not to object to granting FIPUG’s conditional intervention subject to proof of standing pending FIPUG’s responses to OPC discovery. Moreover, OPC has not waived its right to object to this intervention if FIPUG fails to provide proof of standing by the conclusion of the hearing. Per the Commission’s Order No. PSC-2025-0446-PCO-EI, the burden to prove standing either factually or by stipulation rests on the person(s) seeking intervention. Thus, the factual basis for standing remains at issue until proof is provided. OPC’s discovery is relevant to obtaining proof, or lack thereof, of the factual basis to established associational or individual standing. OPC’s discovery is timely and relevant for OPC to determine if opposition to intervention is warranted.
- c. FIPUG’s claim that its Protective Order should be granted because OPC’s discovery meets the undue burden criterion, the undue expense criterion, and/or annoyance criterion of Rule 1.280(d) is meritless. First, providing basic, factual, information such as member names, the purpose of the association, or how a person becomes a member regarding FIPUG’s association should not cause an undue burden if the association exists and has been in operation for years. It is unclear how providing basic information regarding the association and membership to meet associational standing or individual standing test could be cause for annoyance, embarrassment, or oppression. FIPUG has failed to make any claim such information is confidential or privileged and the basis for such a claim. Arguendo, even if FIPUG claims such basic information is confidential, the Commission has tools to preserve confidentiality.

Second, it is hard to understand that this basic information would be annoying, embarrassing, or oppressive to a transparent organization. In fact, these basic facts are required by case law⁴ to meet the three-prong test for associational

⁴ 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

- standing. Associational standing requires that: (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. Requiring FIPUG to respond to 28 interrogatories including subparts and 6 production of document requests designed to determine the factual basis underlying FIPUG's assertion of associational standing is not unduly burdensome or oppressive given that this information is only available from FIPUG.
- d. FIPUG's reliance on Sugarmill Woods Civic Association, Inc. v. Southern States Utilities, 687 So. 2 1346 (Fla. 1st DCA 1997) does not support the issuance of a protective order. In the Sugarmill case regarding setting statewide rates for its systems, Hernando County intervened and issued subpoena duces tecum on large members of the PSC's staff and an attorney for SUS. Id. at 1350. The Prehearing Officer quashed the subpoenas after a motion for protect order was filed asserting that this broad discovery request was a "fishing expedition." Id. at 1351. The Prehearing Officer determined that public policy supported denial of the discovery without requiring question-by-question determinations. The Court deferred to the Prehearing Officer's decision since discovery decisions are true discretionary acts of which the trial judge has first-hand knowledge. Id. The discovery requests in this case are distinguishable from discovery requests served in Sugarmill. First, this case does not involve subpoenaing the staff of the decision-making body (i.e. the PSC staff), or a party's attorney. Second, the Commission's own order requires FIPUG to prove the factual basis for its standing to intervene. Thus, the discovery is not a "fishing expedition" seeking information beyond the scope of issues in this matter but narrowly tailored questions to establish facts that are at issues regarding FIPUG's standing in the underlying case.

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 198 1).

FIPUG on page 9 of its Motion makes an unsubstantiated claim that Public Counsel discovery requires known consumer parties to incur additional expense to call witnesses to establish standing and demands that consumer parties disclose confidential information in support of their standing. However, this claim makes two unsubstantiated assertions. First, the Commission's Order requires FIPUGs to prove standing which may require a witness, if proof has not been provided otherwise. Second, FIPUG has not stated why any information regarding the association or its membership should be considered confidential for purposes of establishing standing. Standing to participate in a particular docket has to be established each time and cannot be bootstrapped from prior proceedings.

If as asserted on page 10 of FIPUG's Motion it has represented the interest of large users of electricity before Commission for decades, answering the propounded discovery is in the public interest and should be a simple, non-laborious process to provide the proof required by Commission Order. If FIPUG believed that a particular request was beyond the scope of proof required by the Commission's Order, then FIPUG should have objected specifically with grounds sufficient for parties to respond, and not with an overly broad protective order.

CONCLUSION

OPC has contacted parties to this docket to provide notice to all and to provide FIPUG with an opportunity to withdraw its motion for a protective order. DEF, and Nucor took no position and FIPUG reserved its right to respond to the motion.

THEREFORE, the Citizens hereby request that the Commission deny FIPUG's Motion for Protective Order and grant OPC's Motion to Compel FIPUG to respond to all of Citizens' First Set of Interrogatories (Nos. 1-11) and First Request for Production of Documents (Nos. 1-6) immediately.

Respectfully Submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20250113-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 23rd day of March, 2026, to the following:

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