

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 24, 2026

CITIZENS' MOTION TO COMPEL

The Citizens of the State of Florida (“Citizens”) hereby file their Motion to Compel, requesting that the Prehearing Officer issue an order requiring Florida Industrial Power Users Group (“FIPUG”) to respond 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. 1st DCA 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.

MOTION TO COMPEL

6. FIPUG was required to produce its discovery responses twenty days from the date of service inclusive of mailing per the Order Establishing Procedure ("OEP"), Order No. PSC-2025-0430-PCO-EI, issued November 21, 2025.
7. The discovery responses were due March 16, 2026. Instead of filing responses or specific objections to the discovery serviced, FIPUG filed its Motion for Protective Order ("Motion"). 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.
8. 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.

Thanks.

The parties to the so-called Type 2 stipulations do not understand what constitutes a Type 2 stipulation – apparently confusing stipulation 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”),¹ 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.

Here the OPC objects – end of proposed stipulation.² The issue of standing is not resolved as prescribed by the Intervention Order with these proposed stipulations.

9. 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

¹ *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

² 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.

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.

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 interests are affected is highly relevant and material to establishing standing to participate in a proceeding.

10. 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 FIPUG Intervention Order.
11. 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.
12. FIPUG did not make any specific objections to any of the interrogatories or productions of documents.
13. On 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. However, a review of each discovery request shows they are designed to elicit relevant information required by case law³ to meet the three-prong test for associational 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

³ 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).

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. Florida Rule of Civil Procedure 1.280(c) governs the scope of discovery:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

The scope of discovery was amended in 2024 to adopt almost all the text of Federal Rule of Civil Procedure 26(b)(1) and is to be construed and applied in accordance with the federal proportionality standard. The Federal Rules "strongly favor full discovery whenever possible..." [Republic of Ecuador v. Hincee, 741 F.3d 1185, 1189 \(11th Cir. 2013\)](#) As discussed below, OPC's requests are relevant and proportional to the needs of this case.

15. The following 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:

- a. Please state whether your association is incorporated in the State of Florida?
- b. Please state whether your association has a website or websites and, if so, please provide the website(s) address(es)?

- c. Please state whether your association has members?
- d. Please identify the officers and/or leaders of your association and their positions?
- e. Please explain the purpose of your association?
- f. Please explain the general scope of interest and activities of your association?
- g. Please explain how a person or corporation joins your association?
- h. What is FIPUG's preferred name for its members such as patrons, members, associates, etc., if any?

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.

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?

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?

16. 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?

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.

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.

17. Although FIPUG cited the following Interrogatories Nos. 8-10 to support its 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, a review of each questions shows they seek specific, relevant information regarding the associational standing, the associations purpose with regard to docket, members qualification for participation, and any potential conflicts in the associational membership. These issues are relevant to the three-prong test for associational standing:

Membership.

Interrogatory 8: If FIPUG claims to have members and/or participants in its association, please respond to the following:

- a. Is your membership *ad hoc*, subject to changing from docket-to-docket based upon subject matter, the utility involved, the year filed, and/or other considerations? Please explain.
- b. Does your membership who have indicated their intent to participate in this docket purport to include members of a DEF large industrial rate class?
- c. Does your membership who have indicated their intent to participate in this docket purport to include members of a DEF large commercial rate class customers?
- d. Does your membership who have indicated their intent to participate in this docket purport to include individual members who are data centers (current or planned)? If yes, does this include data center members whose current or planned initial load is less than 100 MW? Does it include data center member(s) who intend to take service at or over 100MW?
- e. Does your membership include data center developers, data center real estate brokers, or data center construction companies? If yes, are their interests identical to those articulated in your response to interrogatory 1.e., above? If not, please explain differences.
- f. Does your membership include entities who take power at a

DEF small commercial rate class? If yes, how does FIPUG resolve conflicts of interest in the associational purpose of FIPUG articulated in your response to 1.e. above?

- g. Does your membership include entities who take power from DEF at a rate class tariff that is different from those articulated above? If yes, which rate classes? How does FIPUG resolve conflicts of interest between those rate classes and the associational purpose of FIPUG related to the large industrial and large commercial rate classes articulated in your response to 1.e. above?

Interrogatory 9: In this docket, what is the primary interest that your association is seeking to represent?

- a. Are there other interests in this litigation that your association is also seeking to represent?
- b. Are there individual customer Parties that are FIPUG members who are representing themselves separately in this docket?
- c. Are there any Parties who are representing themselves in this docket that you are also representing in this docket (through dual, joint, or shared representation)?
- d. Is FIPUG currently representing both industrial and commercial rate classes and data centers simultaneously? If so, whose interest takes precedence?

Interrogatory 10: Is your association in the process of seeking to add members of other rate classes, including data center members, to this docket who have not yet joined this docket but may do so?

Interrogatory 11: Please identify who is the association's "corporate representative" who has knowledge of the association's membership, operations, and conflict resolution procedures?

- 18. The following requests for production of documents are related to the interrogatories discussed above and thus also seek relevant information to demonstrate if FIPUG can prove it meets the three-prong test for associational standing. The production of document requests are as follows:

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.

CONCLUSION

19. OPC incorporates its separately pled Citizens' Response in Opposition to FIPUG's Motion for Protective Order, filed March 23, 2026, into this motion to the degree that such matters may assist the Prehearing Officer to render a decision in these matters. OPC has filed these matters separately to provide the Prehearing Officer with the opportunity to deny FIPUG's motion separately from acting on OPC's motion to compel, consistent with the decision to abate the other discovery actions in this docket.
20. Obviously, the past due information sought is relevant to determine whether FIPUG has standing as an association to participate in this docket. Since FIPUG bears the burden to prove associational standing by the Commission's Order, it remains a live issue in the docket. Thus, the Commission should compel FIPUG to respond to the requested discovery immediately.
21. OPC has contacted parties to this docket and FIPUG reserved right to respond to pleading. NUCOR and DEF take no position on the motion, PCS Phosphate-White Springs and Commission staff provided no response by the time of the filing of this Motion.

THEREFORE, the Citizens hereby request that the Commission 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,

/s/ Walt Trierweiler

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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 24th day of March, 2026, to the following:

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