

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 31, 2026

FIPUG'S RESPONSE TO CITIZENS' MOTION TO COMPEL

The discovery matter before the Prehearing Officer arises from the Office of Public Counsel's ("OPC") service to the Florida Industrial Power Users Group (FIPUG) of OPC's First Set of Interrogatories (Nos. 1-11) and its First Request for Production of Documents (Nos. 1-6). After receipt and review, FIPUG filed its Motion for Protective Order directed at this discovery on March 16, 2026. OPC filed its Response to FIPUG's Motion for Protective Order on March 23, 2025. OPC filed its Motion to Compel on March 24, 2026 and FIPUG today files its Response to OPC's Motion to Compel. All of these filings relate to FIPUG's standing to intervene in this proceeding and respectfully, should be considered together with one another.

At the outset, FIPUG clarifies its position regarding standing. Because prehearing statements have not yet been filed, and the deadline for doing so has been abated, if OPC does not formally contest FIPUG's standing, FIPUG will be treated as a party consistent with Florida Public Service Commission ("Commission" or "PSC") practice. If OPC formally contests FIPUG's standing in its prehearing statement -- an issue that Public Counsel has not raised in decades of Commission proceedings -- FIPUG will use its best efforts to meet the applicable legal requirements to establish standing as set forth in Fla. Home Builders Ass'n v. Dept. of Labor and Employment Security, 412 So. 2d 351, 353-354 (Fla. 1982) and In Re: Petition for rate increase by Florida Power & Light Rate Company, Docket Number 20250011-EI, Order No. PSC-2026-0022-S-EI at pages 19-21 (January 22, 2026).

FIPUG has standing to participate in this proceeding as a substantially affected party

pursuant to sections 120.569 and 120.52(13)(b), Florida Statutes. Should the Commission ultimately determine that the record does not establish FIPUG's standing on that basis, FIPUG alternatively seeks full party status pursuant to section 120.52(13)(c), Florida Statutes. This request is made in light of: (1) OPC's pursuit of discovery ostensibly directed to "standing" despite not having previously directly challenged FIPUG's standing in any prior Commission proceeding, and not having filed a response in opposition to FIPUG's petition to intervene in this proceeding; (2) OPC's refusal to reconsider its position contesting the standing of three parties in this case that have appeared before the Commission in numerous prior proceedings; (3) OPC's disagreement with, or refusal to take a position on, the Type 2 stipulation standing stipulation agreed to by all other parties; and (4) the procedural posture of this case, coupled with the potential for further OPC objections to FIPUG's efforts to establish and confirm its standing. Section 120.52(13)(c), Florida Statutes, as cited in FIPUG's Motion for Protective Order at page 9, provides all agencies the statutory authority and discretion to admit "any other person" as a party to an administrative proceeding, even without a showing of substantial interests.

Section 120.52(13)(c) reflects the Legislature's determination that, under the Florida Administrative Procedure Act, Chapter 120, administrative proceedings are part of an agency's policy-development process and that a robust record with broad, differing views of diverse interested parties is preferred. *See Florida Home Builders Ass'n v. Dep't of Labor & Employment Sec.*, 412 So. 2d 351, 352–53 (Fla. 1982), citing *Reporter's Comments on Proposed Administrative Procedure Act for the State of Florida*, March 9, 1974, at p. 3, reprinted in 3 A. England & L. Levinson, *Florida Administrative Practice Manual* at 79 (1979) ("The principal purpose for the adoption of a wholly-revised administrative procedure act for Florida is to remedy massive definitional, procedural and substantive deficiencies in existing law ... (v) by broadening public

access to the precedents and activities of agencies”). In this case, Duke Energy Florida, LLC (“DEF”), among other things, is asking the Commission to adopt for large load users a policy, a prospective tariff, and a contract, among other things. The Prehearing Officer has discretion and reasonable justification, given the timing and circumstances of this discovery dispute, to grant FIPUG standing pursuant to section 120.52(13)(c), Florida Statutes.

SCOPE OF DISCOVERY

Florida Rule of Civil Procedure 1.280(c) limits the scope of permissible discovery and states in pertinent part:

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,

Rule 1.280(c), Fla. R. Civ. P. (emphasis added). As conceded by OPC, the issue of FIPUG’s standing involves "mundane" issues of fact. Specifically, case law states that an association has standing to intervene in an administrative proceeding under section 120.52(13)(b), Florida Statutes, when:

- (1) the association demonstrates that a substantial number of an association’s members, although not necessarily a majority, may be substantially affected by the agency's decision;
- (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.

See Fla. Home Builders, 412 So. 2d at 353-54.

OPC’s numerous and wide-ranging discovery requests, with limited exceptions as identified below, range well beyond the core facts relevant to FIPUG's standing and are

disproportionate to the needs of this case with respect to any substantive issue pending before the Commission.

Florida legal authority and case law discussing the “proportional needs of the case” is instructive. Florida Rule of Civil Procedure 1.280(c) directs courts to apply proportionality “in accordance with the principles and guidelines established in the Federal Rules of Civil Procedure.” As the Advisory Committee to the Federal Rules of Civil Procedure has explained, “[t]he objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry. The new sentence is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse.” *Fed. R. Civ. P. 26(b)(1) advisory committee’s note to 2015, 1983 amendments*.

Under the scope limitations of the Rules, discovery must be both “relevant to any party’s claim or defense and proportional to the needs of the case.” *Guss v. 3217 Corrine, LLC*, 415 So. 3d 846, 847 (Fla. 6th DCA 2025). In this case, OPC’s far-ranging discovery requests that seek detailed information beyond the limited scope of information necessary to establish associational standing under sections 120.52(13)(b), 120.569, and 120.51(1), Florida Statutes, or 120.52(13)(c) Florida Statutes, are neither relevant to any substantive claim or defense in the case, nor proportional to the needs of the case. *See, e.g., Pamela Patel v. BayCare Health System*, 2025 WL 4036631, at *1 (M.D. Fla. Oct. 9, 2025) (“Even if this information were relevant, it is not proportional to the needs of the case because it is not appropriately limited in scope.”).

Specifically, the Public Counsel himself described OPC’s interest in the standing issue as follows: “Standing is a jurisdictional threshold issue that’s easily resolved in Florida.” He further described standing issues as “just the mundane matters that require resolution so that we can all

focus our attention on the legal and factual issues in controversy.” See Public Counsel’s e-mail of February 27, 2026 to PSC staff and parties of record attached as Exhibit A to FIPUG’s March 16 Motion for Protective Order.

The scope of permissible discovery targeting the issue of FIPUG's standing to participate in this proceeding under section 120.52(13)(b), 120.569, and 120.52(13)(c), Florida Statutes, is limited by Rule 1.280(c), Fla. R. Civ. P. and should not extend beyond the three limited factors identified above in the *Florida Home Builders* case and the statutory citations above.

OPC INTERROGATORIES AND FIPUG’S OBJECTIONS

OPC 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?

FIPUG Objection: Irrelevant. The Commission does not require customers to demonstrate that they are incorporated in the State of Florida to establish standing in Commission proceedings. See, *In re: Petition for rate increase by Florida Power & Light Company*, Docket No. 20250011-EI, Order No. PSC-2026-0022-S-EI at pages 19-21 (January 22, 2026)

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

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad.

- c. Please state whether your association has members?

FIPUG Objection is Withdrawn

- d. Please identify the officers and/or leaders of your association and their positions?

FIPUG Objection: Not Proportional to the Needs of this Case; Irrelevant; Immaterial; Overbroad; and seeks Protected Confidential Information.

- e. Please explain the purpose of your association?

FIPUG Objection is Withdrawn

- f. Please explain the general scope of interest and activities of your association?

FIPUG Objection is Withdrawn

- h. Please explain how a person or corporation joins your association?

FIPUG Objection: Not Proportional to the Needs of this Case; Irrelevant; Immaterial; Overbroad; and seeks Protected Confidential Information.

- g. What is FIPUG's preferred name for its members such as patrons, members, associates, etc., if any?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad.

OPC 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.

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Overbroad; Burdensome; and seeks Protected Confidential Information. The identity of individual FIPUG members is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding, in light of the less intrusive evidence FIPUG is prepared to provide. The forced disclosure of names and other identifying information would exceed what is reasonably necessary to show standing and would risk chilling members' willingness to associate and participate in Commission proceedings. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence of FIPUG's standing to participate on behalf of its members.

OPC 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?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad; Burdensome; and seeks Protected Confidential Information. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

OPC 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?

FIPUG Objection is Withdrawn.

OPC 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?

FIPUG Objection: Overbroad; Not Proportional to the Needs of this Case; Immaterial; seeks Protected Confidential Information and is burdensome in that it requires inquiry, analysis, and creation of information of specific FIPUG members and seeks protected confidential information. The identity of "specific" FIPUG members is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding. The forced disclosure of names and other identifying information would exceed what is reasonably necessary to show standing and would risk chilling members' willingness to associate and participate in Commission proceedings. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

OPC 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.

FIPUG Objection: FIPUG objects to this interrogatory to the extent it is Not Proportional to the Needs of this Case; seeks a legal opinion, work product, is overbroad, irrelevant and burdensome. Subject to and without waiver of these objections, see Section 366.093(2), Fla. Stat.; Section 366.093(3)(e), Fla. Stat.; Section 120.52(13)(b), Fla. Stat.; Section 120.52(13)(c), Fla. Stat.; Rule 1.280(c) and (d), Fla. R. Civ. P.; Rule 25-22-006, Fla. Admin. Code;

OPC's 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.

FIPUG Objection: Not Proportional to the Needs of this Case; Overbroad; Immaterial; Irrelevant; Burdensome, and seeks Protected Confidential Information. The identity of a specific FIPUG member is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

OPC 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.

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome, Compound, Irrelevant, and seeks Protected Confidential Information.

- 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?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome, Irrelevant, and seeks Protected Confidential Information.

- 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?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome; and seeks Protected Confidential Information.

- 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?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome; and seeks Protected Confidential Information.

- 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.

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome; and seeks Protected Confidential Information.

- 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?

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome, and seeks Protected Confidential Information.

- 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?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Compound, Burdensome, and seeks Protected Confidential Information.

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

FIPUG Objection: Vague and Ambiguous as to what is meant by “primary interest”; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome; seeks Protected Confidential Information, information protected by attorney work product and attorney client communication related to the “primary issue” of interest in the case.

- a. Are there other interests in this litigation that your association is also seeking to represent?

FIPUG Objection: Vague and Ambiguous as to what is meant by “other interests”; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome; Irrelevant; seeks Protected Confidential Information, information protected by attorney work product and attorney client communications.

- b. Are there individual customer Parties that are FIPUG members who are representing themselves separately in this docket?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad; Burdensome, and seeks Protected Confidential Information.

- 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)?

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad; Burdensome, and seeks Protected Confidential Information.

- d. Is FIPUG currently representing both industrial and commercial rate classes and data centers simultaneously? If so, whose interest takes precedence?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome, and seeks Protected Confidential Information.

OPC 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?

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome, and seeks Protected Confidential Information.

OPC Interrogatory 11: Please identify who is the association’s “corporate representative” who has knowledge of the association’s membership, operations, and conflict resolution procedures?

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Irrelevant; Overbroad; Compound; Burdensome, and seeks Protected Confidential Information. Furthermore, the Commission does not require customers to demonstrate that they are incorporated or have a corporate representative in the State of Florida to establish standing in Commission proceedings. See, In re: Petition for rate increase by Florida Power & Light Company, Docket No. 20250011-EI, Order No. PSC-2026-0022-S-EI at pages 19-21 (January 22, 2026)

OPC’S REQUEST FOR PRODUCTION

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

FIPUG Objection: Irrelevant. The Commission does not require customers to demonstrate that they are incorporated in the State of Florida to demonstrate standing in Commission proceedings. See, In re: Petition for rate increase by Florida Power & Light Company, Docket No. 20250011-EI, Order No. PSC-2026-0022-S-EI at pages 19-21 (January 22, 2026)

OPC 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.

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Burdensome, and seeks Protected Confidential Information. The identity of individual FIPUG members is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding. The forced disclosure of names and other identifying information would exceed what is reasonably necessary to show standing and would risk chilling members' willingness to associate and participate in Commission proceedings. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

OPC 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.

FIPUG Objection: Irrelevant; Immaterial Not Proportional to the Needs of this Case; Overbroad; Burdensome, and seeks Protected Confidential Information. Further, The Commission does not require customers to demonstrate that they are incorporated in the State of Florida to demonstrate standing in Commission proceedings. See, In re: Petition for rate increase by Florida Power & Light Company, Docket No. 20250011-EI, Order No. PSC-2026-0022-S-EI at pages 19-21 (January 22, 2026)

OPC 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.

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome, Compound, and seeks Protected Confidential Information. The identity of individual FIPUG members is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding. The compelled disclosure of names and other identifying information would exceed what is reasonably necessary to show standing and would risk chilling members' willingness to associate and participate in Commission proceedings. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

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

FIPUG Objection: Not Proportional to the Needs of this Case; Immaterial; Overbroad; Irrelevant; Vague; Burdensome, and seeks Protected Confidential Information. The identity of individual FIPUG members is not required for the Commission to determine whether FIPUG, as an association, has standing to participate in this proceeding. The compelled disclosure of names and other identifying information would exceed what is reasonably necessary to show standing and would risk chilling members' willingness to associate and participate in Commission proceedings. Subject to and without waiver of these objections, FIPUG is prepared to provide evidence sufficient to demonstrate FIPUG's standing.

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

FIPUG Objection: Irrelevant; Not Proportional to the Needs of this Case; Immaterial; Overbroad; Burdensome, and seeks Protected Confidential Information. FIPUG objects to this Request to the extent it seeks “any documentation” referenced in OPC's First Set of Interrogatories, and incorporates herein FIPUG's objections to those interrogatories as though set forth in full.

CONCLUSION

As set forth in FIPUG's Response to OPC's Motion to Compel, and in FIPUG's Motion for Protective Order, there are many reasons that are within the sound discretion of the Prehearing Officer to stop OPC from embarking on a discovery fishing expedition which largely seeks information that is not proportional to the needs of the case. A limited number of OPC interrogatories seek information that is within the narrow scope of what must be established to demonstrate legal standing pursuant to section 120.52(13)(b), 120.569, and 120.52(13)(c), Florida Statutes. Accordingly, FIPUG will respond to OPC interrogatories 1(c), 1(e), 1(f) and 4 after the abatement period is lifted. FIPUG is prepared to present evidence of its standing to satisfy the requirements of Fla. Home Builders Ass'n v. Dept. of Labor and Employment Security, 412 So. 2d 351, 353-354 (Fla. 1982) and sections 120.52(13)(b), 120.569, and 120.52(13)(c), Florida Statutes. Except for the four interrogatory requests identified above, FIPUG's motion for protective order should be granted as to all other OPC discovery requests directed to FIPUG.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 31st^{day} of March, 2026, to the following:

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