

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to  
approve first solar base rate adjustment, by  
Duke Energy Florida, LLC.

DOCKET NO. 20180149-EI  
ORDER NO. PSC-2019-0069-PCO-EI  
ISSUED: February 25, 2019

ORDER GRANTING INTERVENTION

On July 31, 2018, this docket was established to consider Duke Energy Florida, LLC's (DEF) first Solar Base Rate Adjustment (SoBRA). Consistent with its 2017 Revised and Restated Settlement Agreement approved by Order No. PSC-2017-0451-AS-EU,<sup>1</sup> and pursuant to Sections 366.076, 120.57(2) and 366.06(3), Florida Statutes (F.S.), and Rule 28-106.301, Florida Administrative Code (F.A.C.), DEF petitioned for a limited proceeding seeking approval of its First SoBRA tranche, effective January 2019.

Petition for Intervention

By motion dated August 8, 2018, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. FIPUG contends that the cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets. In this case, the Commission will consider DEF's request to recover rates for certain solar power facilities. These rates, if approved, will be recovered from DEF's customers, including FIPUG members. FIPUG alleges that its interests are of the type that this proceeding is designed to protect. The purpose of the proceeding is to evaluate DEF's request to recover rates for certain solar power facilities. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that the rates its members who receive electrical service from DEF are charged fair, just, and reasonable rates for power that is needed and cost-effective.

Standards for Intervention

Pursuant to Rule 28-106.205, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

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<sup>1</sup> Order No. PSC-2017-0451-AS-EU, issued on November 20, 2017, in Docket No. 20170183-EI, In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

To have standing, the intervenor must meet the three-prong test set forth in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (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 (Fla. 2d DCA 1981).<sup>2</sup> Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Based on the above representations, it appears that FIPUG has met the associational standing requirements of Florida Home Builders stated above. FIPUG asserts that it has a substantial number of its members that are ratepayers of DEF and as a result are directly and substantially affected by the decision in this case. Further, keeping electricity costs as low as possible falls within the purview of FIPUG's general scope of interest and is the type of relief appropriate for FIPUG to receive on behalf of its members. Therefore, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by Florida Industrial Power Users Group is hereby granted as set forth in the body of this Order. It is further

ORDERED that FIPUG takes the case as it finds it. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding to:

Jon C. Moyle, Jr.  
Karen A. Putnal  
Moyle Law Firm, P.A.  
118 North Gadsden Street Tallahassee, Florida 32301  
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<sup>2</sup> Under Agrico, the intervenor must show that: (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing; and (2) the substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); See also: Village Park Mobile Home Assn., Inc. v. State Department of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 25th day of February, 2019.



ANDREW GILES FAY  
Commissioner and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.