

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission Review of Numeric Conservation Goals (Florida Power & Light Company).	DOCKET NO.: 20190015-EG
In re: Commission Review of Numeric Conservation Goals (Gulf Power Company).	DOCKET NO.: 20190016-EG
In re: Commission Review of Numeric Conservation Goals (Florida Public Utilities Company).	DOCKET NO.: 20190017-EG
In re: Commission Review of Numeric Conservation Goals (Duke Energy Florida, LLC).	DOCKET NO.: 20190018-EG
In re: Commission Review of Numeric Conservation Goals (Orlando Utilities Commission).	DOCKET NO.: 20190019-EG
In re: Commission Review of Numeric Conservation Goals (JEA).	DOCKET NO.: 20190020-EG
In re: Commission Review of Numeric Conservation Goals (Tampa Electric Company).	DOCKET NO.: 20190021-EG FILED: May 3, 2019

**FLORIDA INDUSTRIAL POWER USERS GROUP'S
PETITION TO INTERVENE IN DOCKET NUMBERS
20190015-EG, 20190016-EG, 20190018-EG, AND 20190021-EG**

Petitioner Florida Industrial Power Users Group ("FIPUG"), pursuant to sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby files this petition to intervene in Public Service Commission docket numbers 20190015-EG, 20190016-EG, 20190018-EG, and 20190021-EG, and in support thereof states as follows:

The Parties

1. Petitioner / Intervenor is:

Florida Industrial Power Users Group
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For purposes of service of all pleadings, notices, and orders in these consolidated dockets, Intervenor's mailing and e-service addresses are as follows:

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2. The affected agency is the Florida Public Service Commission, with a principal place of business at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.
3. The affected utility in docket number 20190015-EG is Florida Power & Light Company ("FPL").
4. The affected utility in docket number 20190016-EG is Gulf Power Company ("Gulf Power").
5. The affected utility in docket number 20190018-EG is Duke Energy Florida, LLC ("Duke").
6. The affected utility in docket number 20190021-EG is Tampa Electric Company ("TECO").

FIPUG's Substantial Interests

7. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. 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.

8. In these cases, which were consolidated for hearing by order of the Commission dated February 18, 2019, the Commission will review each utility's numeric conservation goals under the Florida Energy Efficiency and Conservation Act (the "Act" or "FEECA"), sections 366.80 to 366.83, Florida Statutes, and rule 25-17.0021(2), Florida Administrative Code.

9. Docket numbers 20190015-EG, 20190016-EG, 20190018-EG, and 20190021-EG concern, respectively, FPL's, Gulf Power's, Duke's, and TECO's numeric conservation goals. FIPUG has members that receive electric service from each of these utilities. As such, the Commission's decisions in these dockets will affect each utility and its customers, including those customers that are FIPUG members.

10. As discussed below, FIPUG has standing to intervene in this matter on behalf of its members. In *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982), the Florida Supreme Court set forth the requirements for an organization to demonstrate associational standing on behalf of its members in administrative proceedings.¹ An organization must demonstrate that 1) a substantial number of its members, although not necessarily a majority, are "substantially affected" by the agency action; 2) the subject matter of the case is within the association's general scope of interest and activity; and 3)

¹ Although *Florida Home Builders Association* concerned standing in actions brought pursuant to section 120.56(1), Florida Statutes, its rationale has been extended to actions brought pursuant to 120.57, Florida Statutes, by the First District Court of Appeal's decision in *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982).

the relief requested is of the type appropriate for the association to receive on behalf of its members. *Id.* at 353-54.

11. A substantial number of FIPUG members will be affected by the Commission's approval, modification, or rejection of FPL's, Gulf Power's, Duke's, and TECO's conservation goals under the Act in these dockets. Each of these utilities' implementation of its conservation goals, as approved or modified by the Commission in these dockets, could result in future adjustment of rates in order to offset costs associated therewith. *See* §§ 366.80-366.83, Fla. Stat; Fla. Admin. Code R. 27-17.015. As such, each FIPUG member that is an electricity customer of FPL, Gulf Power, Duke, or TECO will be affected by the outcomes of these cases. *See Agrico Chem. Co. v. Dep't of Env't Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

12. Moreover, the subject matter of these dockets is within FIPUG's general scope of interest and activity. FIPUG routinely appears on behalf of its members in cases concerning utility regulation, as the cost of electricity represents a significant portion of its members' production costs. As such, the subject matter of the instant dockets, i.e. review of each utility's numeric conservation goals and the Commission's approval, modification, or rejection thereof under the Act and consideration of any costs attendant therewith, is well within FIPUG's scope of interest and activity. Further, FIPUG has been permitted to intervene in prior FEECA proceedings before the Commission.

13. Additionally, the relief sought by FIPUG by way of the instant petition is of the type appropriate for it to receive on behalf of its members and pursuant to rules 25-17.0021(2) and 28-106.205(1), Florida Administrative Code. FIPUG seeks, by way of the instant petition, leave to intervene as a party with full rights to participate in these consolidated dockets. Because its members are industrial electricity customers who will be affected by the outcome of these

cases, FIPUG's participation in these consolidated dockets is appropriate to ensure that its members have a meaningful opportunity to review and understand aspects of the numeric conservation goals of FPL, Gulf Power, Duke, and TECO, as well as any potential costs resulting therefrom that each utility may seek to have passed on to electric customers in a future energy conservation cost recovery proceeding instituted pursuant to rule 25-17.015, Florida Administrative Code. Additionally, FIPUG seeks to conduct discovery in these consolidated dockets as warranted in its judgment, and raise issues of material fact that may arise herein.

14. Further, FIPUG's interests are of the type that this proceeding is designed to protect. *See, Agrico Chem. Co.*, 406 So.2d at 482. The purpose of the proceeding is for the Commission to review and approve, modify, or reject each utility's numeric conservation goals and any costs associated therewith. The outcome of the proceeding will thus have significant implications for FIPUG members that are FPL, Gulf Power, Duke, or TECO customers. Accordingly, FIPUG's interests in ensuring that the rates of its members who receive electrical service from FPL, Gulf Power, Duke, or TECO are fair, just, and reasonable, and that the potential ramifications of approval, modification, or rejection of these four utilities' numeric conservation goals and costs attendant therewith are duly considered, are of the type that this proceeding is designed to protect.

Notice of Proceeding

15. FIPUG received notice of these consolidated dockets by a review of the Commission's website.

Statement of Position

16. FPL, Gulf Power, Duke, and TECO must meet their respective burdens of proof in this matter. FIPUG seeks to conduct discovery and reserves the right to modify its position based on information obtained during discovery.

Disputed Issues of Material Fact

17. Disputed issues of material fact have not yet been identified with certainty; however, whether FPL's, Gulf Power's, Duke's, or TECO's numeric conservation goals should be approved will be determined in these dockets. FIPUG reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in these dockets.

18. Disputed legal issues include, but are not limited to, the following:

a. Whether each utility's proposed goals are based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to section 366.82(3), Florida Statutes;

b. Whether each utility's proposed goals adequately reflect the costs and benefits to customers participating in the measure, pursuant to section 366.82(3)(a), Florida Statutes;

c. Whether each utility's proposed goals adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, pursuant to section 366.82(3)(b), Florida Statutes;

d. Whether each utility's proposed goals adequately reflect the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems, pursuant to section 366.82(3)(c), Florida Statutes;

e. Whether each utility's proposed goals adequately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases, pursuant to section 366.82(3)(d), Florida Statutes;

f. Which cost-effectiveness test should be used by the Commission to set goals, pursuant to section 366.82, Florida Statutes;

g. Whether each utility's proposed goals appropriately reflect consideration of free riders;

h. What commercial/industrial summer and winter megawatt and annual gigawatt-hour goals should be established for the period 2020-2029; and

i. What goals, if any, should be established for increasing the development of demand-side renewable energy systems, pursuant to section 366.82(2), Florida Statutes?

Statement of Ultimate Facts Alleged and at Issue

19. Ultimate facts alleged and at issue include, but are not limited to, the following:

a. Each utility's proposed goals must be based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems;

b. Each utility's proposed goals must adequately reflect the costs and benefits to customers participating in the measure;

c. Each utility's proposed goals must adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions;

d. Each utility's proposed goals must adequately reflect the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and

e. Each utility's proposed goals must adequately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases.

Rules and Statutes Justifying Relief

20. The rules and statutes that entitle FIPUG to intervene and participate in this case include, but are not limited to:

- a. Section 120.569, Florida Statutes;
- b. Section 120.57, Florida Statutes;
- c. Section 366.04(1), Florida Statutes;
- d. Section 366.05(1)(e), Florida Statutes;
- e. Sections 366.80 to 366.83, Florida Statutes;
- f. Rule 25-17.001, Florida Administrative Code;
- g. Rule 25-17.0021, Florida Administrative Code;
- h. Rule 28-106.201, Florida Administrative Code; and
- i. Rule 28-106.205, Florida Administrative Code.

Relief Requested

21. FIPUG requests that it be permitted to intervene as a full party in these consolidated dockets.

Statement Required by Rule 28-106.204(3), Florida Administrative Code

22. Counsel for FIPUG has conferred with counsel for FPL and is authorized to represent that FPL, while reserving its right to object, takes no position at this time on FIPUG's Petition to Intervene.

23. Counsel for FIPUG has conferred with counsel for Gulf Power and is authorized to represent that Gulf Power takes no position at this time on FIPUG's Petition to Intervene.

24. Counsel for FIPUG has conferred with counsel for Duke and is authorized to represent that Duke takes no position on FIPUG's Petition to Intervene.

25. Counsel for FIPUG has conferred with counsel for TECO and is authorized to represent that TECO has no objection to FIPUG's Petition to Intervene.

WHEREFORE, FIPUG requests that the Commission enter an order allowing it to intervene and participate as a full party in consolidated docket numbers 20190015-EG, 20190016-EG, 20190018-EG, and 20190021-EG.

/s/ Ian E. Waldick _____

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Petition to Intervene has been furnished by electronic mail this 3rd day of May 2019 to the following:

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