

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 (Duke Energy Florida, LLC).

DOCKET NO. 20190018-EG

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 20190021-EG  
ORDER NO. PSC-2019-0182-PCO-EG  
ISSUED: May 22, 2019

ORDER GRANTING INTERVENTION

On January 15, 2019, Docket Nos. 20190015-EG, 20190016-EG, 20190017-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG were established to review and adopt the corresponding utility's conservation goals pursuant to Sections 366.80-366.83 and 403.519, Florida Statutes, known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). By the Order Consolidating Dockets and Establishing Procedure, Order No. PSC-2019-0062-PCO-EG, issued on February 18, 2019, the dockets were consolidated for purposes of hearing and controlling dates were established. The dockets are currently scheduled for hearing from August 12, 2019, through August 16, 2019.

Petition for Intervention

By motion dated May 3, 2019, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding with respect to only Docket Nos. 20190015-EG, 20190016-EG, 20190018-EG, and 20190021-EG. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. FIPUG states that it has members that receive electric service from Florida Power & Light Company (FPL), Gulf Power Company (Gulf), Duke Energy Florida, LLC (DEF), and Tampa Electric Company (TECO). FIPUG asserts that its members require adequate, reasonably-priced electricity in order to compete in their respective markets.

FIPUG maintains that a substantial number of its members will be affected by the Commission's approval, modification, or rejection of the conservation goals for FPL, Gulf, DEF, and TECO as the utilities' implementation of the goals could result in future adjustment of rates in order to offset costs associated therewith. FIPUG further maintains that its interests are of the

type that this proceeding is designed to protect because its interests include ensuring that the rates of its members who receive electrical service from FPL, Gulf, DEF, and TECO are fair, just, and reasonable, and ensuring that the potential ramifications of approval, modification, or rejection of these four utilities' numeric conservation goals and costs attendant therewith are duly considered.

FIPUG alleges that it 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. Therefore, FIPUG maintains that the subject matter of these dockets is within FIPUG's general scope of interest and activity. FIPUG further alleges that the relief requested is of the type appropriate for FIPUG to receive on behalf of its members to ensure that FIPUG's members have a meaningful opportunity to review and understand aspects of the utilities' numeric conservation goals and any potential costs resulting therefrom that the utilities may seek to have passed on to electric customers in a future energy conservation cost recovery proceeding.

### Standards for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code (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.

To have standing, the intervenor must meet the three-prong standing test set forth in 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, 481-82 (Fla. 2d DCA 1981).<sup>1</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

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<sup>1</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 Dept. 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).

behalf of its members. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

### Decision

Based on FIPUG's representations, it appears that FIPUG has met the associational standing requirements of Florida Home Builders. As to the first prong, FIPUG asserts that a substantial number of its members reside in the service territory of FPL, Gulf, DEF, and TECO and will be affected by the decision in this case. As to the second prong, the subject matter of these dockets falls within the purview of FIPUG's general scope of interest and activity as FIPUG seeks to ensure that the electric rates of its members are fair, just, and reasonable, and to ensure that any decision regarding the utilities' numeric conservation goals and associated costs are duly considered. Moreover, FIPUG routinely appears on behalf of its members in cases concerning utility regulation. As to the third prong, the type of relief requested is appropriate for FIPUG to receive on behalf of its members as FIPUG is seeking participation in this proceeding to ensure that FIPUG's members have a meaningful opportunity to review and understand aspects of the utilities' numeric conservation goals and any potential resultant costs.

Pursuant to Rule 28-106.204(3), F.A.C., all motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Further, any statement that the movant was unable to contact the other parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted. In its motion, FIPUG provided that it conferred with FPL, Gulf, DEF, and TECO, and stated no utility objected to FIPUG's motion. However, FIPUG did not provide a statement indicating whether the Office of Public Counsel, the Florida Department of Agriculture and Consumer Services, or the Southern Alliance for Clean Energy, who are also parties to these proceedings, objected, nor did FIPUG provide a statement that it attempted to contact those parties. Nonetheless, FIPUG appears to have served a copy of its motion on all parties to this proceeding and the time to file a response in opposition to FIPUG's motion has expired. FIPUG should have informed the Commission in its motion whether those additional parties objected, after conferring with them, or provided a statement that it attempted to contact those parties. The requirement to confer does not mean informing other parties of an impending motion, but rather conducting a discussion to determine whether there is an objection.

Based on the above representations, it is

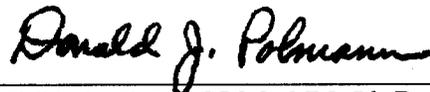
ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Petition to Intervene filed by Florida Industrial Power Users Group is hereby granted as to Docket Nos. 20190015-EG, 20190016-EG, 20190018-EG, and 20190021-EG, as set forth in the body of this Order. It is further

ORDERED that the Florida Industrial Power Users Group 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  
Ian E. Waldick  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301  
jmoyle@moylelaw.com  
kputnal@moylelaw.com  
iwaldick@moylelaw.com  
mqualls@moylelaw.com

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 22nd day  
of May, 2019.



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DONALD J. POLMANN, Ph.D., P.E.  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

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.