

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company
for Rate Unification and for Base Rate Increase

Docket No. 20210015-EI
Filed: July 7, 2021

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO THE PETITION TO INTERVENE
OF FLORIDA INTERNET AND TELEVISION ASSOCIATION**

Florida Power & Light Company (“FPL”) hereby submits its response to Florida Internet and Television Association, Inc.’s (“FITA”) Petition to Intervene (“Petition to Intervene”). Specifically, FPL requests the Florida Public Service Commission (“the Commission”) limit FITA’s participation to issues germane to this proceeding. FITA should not be permitted to use this proceeding to pursue, through discovery or otherwise, efforts that will be considered in separate administrative proceedings, and will be subject to rules and procedures that the Commission will promulgate later this year, as part of its evaluation of pole attachment rates, charges, terms and conditions in Florida. In support, FPL states as follows:

ARGUMENT

A. SB1944 and the Commission’s new jurisdiction over pole attachments.

FITA filed its Petition to Intervene on June 30, 2021, one day after Governor Ron DeSantis signed Senate Bill 1944 (“SB1944”).¹ SB1944 directs the Commission to complete the necessary certification requirements, detailed in 47 U.S.C. 224(c), to expressly divest the Federal Communications Commission (“FCC”) of jurisdiction over the “rates, charges, terms and conditions of pole attachments” in Florida. Thereafter, for the first time, the Commission would

¹ SB1944 established Commission jurisdiction over “rates, charges, terms, and conditions of pole attachments” on certain electric utility poles in Florida, including FPL’s. Prior to SB 1944, the Federal Communications Commission had jurisdiction over pole attachments to FPL’s poles.

have ongoing jurisdiction over the rates, terms and conditions of pole attachments in Florida (including those between FPL and FITA members). The Commission will first need to promulgate the initial procedural rules to administer and implement its new jurisdiction.²

One of the issues in the Commission’s forthcoming pole attachment proceedings will be the pole attachment rate, the methodology used to arrive at that rate, and the various cost components used in the pole attachment rate methodology, not only for attachments to FPL poles, but also for attachments by FPL to the poles of FITA members. In its passage of SB1944, the Florida Legislature indicated awareness that multiple parties would have a substantial interest in both the initial rulemaking proceeding and the subsequent precedent-setting pole attachment rate proceedings. As such, SB1944 expressly grants FITA the same participation rights it seeks here – a right to intervene in the Commission’s pole attachment rate cases:

(f) In the administration and implementation of this subsection, the commission shall authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under chapter 120 in the first four formal administrative proceedings conducted to determine pole attachment rates under this section. These initial four proceedings are intended to provide commission precedent on the establishment of pole attachment rates by the commission and help guide negotiations toward voluntary pole attachment agreements. After the fourth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate.

SB1944, Section 3(f) (emphasis added).

The purpose of this proceeding is to evaluate FPL’s proposed base rate increase and unification of rates with the former Gulf Power Company (“Gulf”). This proceeding does not

² SB1944 Section 3 states: “The commission shall propose procedural rules to administer and implement this subsection. The rules must be proposed for adoption no later than January 1, 2022, and upon adoption of such rules, shall provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).”

involve the Commission determining whether the rates FPL charges FITA members or FITA charges FPL for pole attachments are “fair, just and reasonable” or how the Commission’s new jurisdiction over pole attachments should be implemented. FITA’s Petition to Intervene, and the accompanying premature discovery requests discussed below, seek to convert this proceeding into a prequel of a forthcoming pole attachment rate proceeding, for which the necessary rules and procedures have yet to be established. To that extent, FITA’s Petition to Intervene is not only inappropriate under SB1944, but a distraction from the purposes and administration of this complex ratemaking proceeding. *See, e.g., In Re: Investigation Into Affiliated Cost-Plus Fuel Supply Relationships of Fla. Power Corp.*, Order No 18982, Docket No. 860001-EI-G (Mar. 11, 1988) (limiting discovery to policy issues concerning the pricing of goods and services from affiliated fuel supply affiliates in a proceeding opened to examine these specific issues, rather than permitting a broader prudency review).

B. FITA’s Discovery Requests and Participation.

FITA seeks to intervene on behalf of its members for two stated reasons: (1) the members purchase electricity from FPL and Gulf, *see* Petition to Intervene at 2, ¶ 5; and (2) the members “also attach their cables and other equipment to FPL and Gulf utility poles,” *Id.* FPL does not oppose FITA’s Petition to Intervene for the first stated reason - as an association representing the interests of its members as retail electric customers of FPL and Gulf.

But, FITA’s Petition to Intervene goes too far in also seeking “to ensure that the rates charged to FITA’s members for . . . pole attachments (which are directly impacted by the allocation of costs and revenues that are at issue in this proceeding) are fair, just and reasonable.” Petition to Intervene, 8 at ¶ 13(c). The timing of FITA’s effort to intervene, when contrasted with its past absence from similar proceedings, demonstrates its desire to gain early access to information that it believes might be relevant in the Commission’s future pole attachment proceeding. More telling

is the content of the 23 interrogatories and 15 requests for production FITA served on FPL on July 1, 2021, just one day after filing the Petition to Intervene and obviously before being granted party status.³ The Commission should not allow FITA to use this proceeding to litigate only one side of the issues that will be litigated by all parties in the upcoming proceeding to be instituted pursuant to S.B. 1944 when rates will be established for attachments to all jurisdictional poles, not simply FPL's.

By its own admission, this is FITA's first participation in a FPL electric rate case. In the forty-year history of FCC regulated pole attachment rates, neither FITA, nor its predecessor (Florida Cable Television Association), has ever "previously participated in an electric rate case before this Commission." Petition to Intervene at 7, ¶ 12. FITA's lack of participation is telling as the cost inputs from prior Commission-conducted general rate cases have been utilized in the FCC's pole attachment rate formula for decades. In other words, FPL's prior electric rate proceedings had no more or less bearing on pole attachment rates charged to FITA members than the current proceeding, casting doubt on both the need and propriety of FITA's request for discovery on pole attachment rates in this proceeding.

That said, FITA may exercise its associational rights on behalf of its retail electric customers as any other properly participating party may lawfully do in accordance with the Commission's rules. FPL likewise recognizes that elements within the current case will have some bearing on future pole attachment rates, inasmuch as certain cost inputs borne by FPL's electric customers inform the pole attachment rate setting process. But, early discovery for litigation in a future pole attachment rate case is not the purpose of this proceeding. The Commission has and

³ Because FITA served its discovery prior to being granted party status, the clock for FPL to respond has not yet started.

should exercise authority to properly define the scope of permissible discovery to best serve the purposes of the proceeding. *In Re: Fla. Power Corp.*, Order No. PSC-03-0687-PSC-EI, Docket 000824-EI (June 9, 2003) (limiting the scope of discovery on an ancillary issue regarding ex parte communications in a proceeding on the merits of a settlement refund dispute); *In Re: Complaint of Mad Hatter Util., Inc., & Paradise Lakes Util., LLC Against Verizon Fla., Inc.*, Order No. PSC-10-0021-PCO-PU, Docket 090313-PU (Jan. 7, 2010) (limiting the scope of witness examination on a dispute regarding under-road boring because it was not relevant to the issues raised in that proceeding).

In reviewing the premature discovery, it becomes very obvious that FITA's motivation for intervening in this proceeding (at least in part) is to seek information from the perspective of its interest in "pole attachment rates," as opposed to its interest in retail rates and policies generally. The final seven (7) data requests FITA has propounded upon FPL (again, before being granted party status) well exemplify this point. To varying degree, these requests seek information regarding distribution plant in service that seems only relevant to the derivation of a pole attachment rate. The final request 15 does elicit granular cost data, but seeks that information, as well as unit count data, for 19 subcategories of equipment classes within a single FERC account (364) that FPL reports as part of its FERC Form 1. *See* FITA First Request for Production of Documents to FPL at 3-4.

The interrogatories similarly oscillate between matters arguably within the scope of this proceeding and those within the future pole attachment rate proceeding. Perhaps the most obvious FITA "pole attachment" interrogatories are those asking FPL to calculate "[t]he impact of a one dollar decrease in the pole rental rate on the average distribution customer bill, both on a per dollar and per kilowatt hour basis." *See e.g.*, FITA First Set of Interrogatories to FPL at 3. Several other

discovery requests appear to stray well beyond legitimate requests that are beyond the scope of this proceeding. For example, several subcategories of Interrogatory 12 dive into elements of pole attachment rate design and beyond reasonable inquiries into matters germane to this proceeding. Interrogatories 15, 18 and 19 likewise are patently focused on matters to be raised in a future pole attachment proceeding.

CONCLUSION

If FITA is granted status as a party to this proceeding, for the reasons stated above, FPL reserves the right to object to any and all discovery that is beyond the scope of this proceeding (or is otherwise improper), whether propounded by FITA or any other party. The Commission will

reach pole attachment issues for all parties in due course and FPL will be a willing participant.
This proceeding, however, is not the proper place to start that process.

Respectfully submitted,

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CERTIFICATE OF SERVICE
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I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail this 7th day of July 2021 to the following parties:

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