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Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: October 22, 2026

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, Hampson, Nguyen, Ward) EJD
Division of Engineering (Davis, Ellis) POE
Office of the General Counsel (Thompson, Brownless, Crawford) JSC

RE: Docket No. 20260064-EI – Petition for a limited proceeding to approve large load tariff, by Duke Energy Florida, LLC.

AGENDA: 11/03/26 – Regular Agenda – ~~Interested Persons May Participate~~ KB 10/26/26

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 22, 2026, Duke Energy Florida, LLC (DEF or Utility) filed a petition for a limited proceeding (DEF Large Load Docket) seeking approval of a new Large Load Customer Policy, a Large Load Customer Agreement, and revised Contribution in Aid of Construction tariffs. DEF states that this filing complies with newly passed state legislation, Senate Bill 484 (SB 484). The Governor signed SB 484 into law on May 7, 2026, which took effect on July 1, 2026 (Section 366.043, F.S.). An administrative hearing on DEF's petition was scheduled and held on August 25, 2026.

The Office of Public Counsel (OPC) was authorized to intervene by Section 350.0611, Florida Statutes (F.S.). PCS Phosphate – White Springs (PCS Phosphate), Florida Industrial Power Users Group (FIPUG), Florida Rising, Inc. (FR), and Nucor Steel Florida, Inc. (Nucor) were initially granted intervention in this docket subject to proof of standing or stipulations that there are

sufficient facts to support all elements for standing. The standing of each of the parties granted conditional intervention remained a contested issue in this docket and was designated as Issue 1D in the Prehearing Order.[1]

At the prehearing conference held on August 5, 2026, it was clear there was a dispute about standing amongst some of the parties, whereby DEF challenged the standing of FR, and OPC and FR challenged FIPUG's standing. Accordingly, on August 17, 2026, a stand-alone evidentiary hearing took place before the Prehearing Officer to receive testimony and exhibits to facilitate his determination of whether PCS Phosphate, FIPUG, FR, and Nucor have standing to intervene. The parties filed post-hearing briefs with respect to standing on August 20, 2026. Ultimately, PCS Phosphate's and Nucor's standing was resolved by the parties, but FR and FIPUG's standing remained at issue. The Prehearing Officer entered an order on August 24, 2026, granting standing to the four above-mentioned intervenors.[2]

On September 3, 2026, OPC filed a Motion for Reconsideration (Motion) requesting the Commission reconsider the Prehearing Officer's decision to grant FIPUG standing in this docket, along with a Request for Oral Argument. FIPUG filed its response to the Motion on September 10, 2026, requesting the Commission deny the Motion, and also filed a Response in Opposition to OPC's Request for Oral Argument.

This is staff's recommendation on the Motion and the Request for Oral Argument. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.043, 366.05, and 366.06, F.S., and Rule 25-22.060, Florida Administrative Code (F.A.C).

[1] Order No. PSC-2026--0276-PHO-EI, issued August 11, 2026. Issue D states: "Whether the following persons have standing to intervene in this proceeding: a. PCS Phosphate — White Springs; b. Florida Industrial Power Users Group; c. Florida Rising, Inc.; d. Nucor Steel Florida, Inc."
[2] Order No. PSC-2026-0288-PCO-EI.

Discussion of Issues

Issue 1: Should the Commission grant the Office of Public Counsel's Request for Oral Argument?

Recommendation: No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and rule on the Motion for Reconsideration. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends that 5 minutes per side is sufficient. (Thompson, Crawford)

Staff Analysis:

Law

Rule 25-22.0022(1), F.A.C., allows a party to request oral argument before the Commission for any dispositive motion (such as motions for reconsideration) by filing a separate written pleading filed concurrently with the motion on which argument is requested, and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

Positions of the Parties

OPC asserts that this case represents the first time in recent memory that standing has been considered in depth through a bifurcated process, and requests the opportunity to provide details, context and argument concerning this issue through oral argument.

FIPUG counters that OPC's Request for Oral Argument fails to detail how oral argument would aid the Commission, noting that the issues presented in OPC's Motion for Reconsideration are not novel or uniquely complex, nor do they fall outside the Commission's ordinary expertise.

Analysis and Conclusion

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide the Motion for Reconsideration. The movants have not shown with particularity a reason why oral argument would assist the Commission in understanding and evaluating the issues to be decided. Staff therefore recommends the Request for Oral Argument be denied. However, if the Commission exercises its discretion to hear oral argument, staff recommends that 5 minutes per side is sufficient for oral argument.

Issue 2: Should the Commission grant the Office of Public Counsel's Motion for Reconsideration?

Recommendation: No. The motion for reconsideration should be denied because it fails to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering his decision. (Thompson, Crawford)

Staff Analysis: The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.*, 294 So. 2d at 317.

OPC's Motion raises five issues (Section I-V of the Motion), each of which will be addressed in turn below.

1. *Whether the Prehearing Officer Overlooked Facts and Law by Allowing FIPUG Intervention in the DEF Large Load Docket for an Improper Purpose*

For associational standing, intervenors 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 (Fla. 1982). The test is based on the *Agrico*[3] test but requires that (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. *Fla. Home Builders*, 412 So. 2d at 353-54. FIPUG intervened in its associational capacity; its intervention was granted under the *Florida Home Builders* test.

Positions of the Parties

In the Motion, OPC contends that FIPUG failed to establish affected members under *Florida Home Builders* because FIPUG did not identify any member by name, and FIPUG does not represent the existing 50 MW large-load customer taking service from DEF. OPC further asserts that FIPUG's prehearing position and its "lack of substantive testimony" and "lack of substantive engagement in discovery" as facts the Prehearing Officer should have considered.

[3] *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). *Agrico* is a foundational case regarding standing to intervene. 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.

FIPUG argues that OPC's motion fails to identify any material point of fact or law that was overlooked or not considered by the Prehearing Officer when reaching his decision. FIPUG further asserts that OPC's disagreement with the Prehearing Officer's determination that FIPUG satisfied the *Florida Home Builders* test for associational standing in this docket is not a sufficient basis for reconsideration. FIPUG identifies its affected interests as the cost, reliability, and terms of electricity service to industrial and commercial members, including members that may expand operations. It relies on Sections 120.52(13), 120.52(14), and 1.01(3), F.S.; Chapter 366; *Agrico*; and *Florida Home Builders*.

Analysis and Conclusion

The standard used to consider a party's associational standing, and corresponding case law, was clearly set out in the Order Granting FIPUG's Petition to Intervene[4] and the Order on Standing,[5] as it has been laid out in numerous orders issued by this Commission.

Regarding the first and second prong of the *Florida Home Builders* test, FIPUG asserted in its Petition to Intervene that its members are commercial and industrial electric customers of DEF who will be affected by the Commission's decision in the DEF Large Load Docket, and that the subject matter of the docket appears to be within FIPUG's general scope of interest and activity as an association whose members are commercial and industrial customers who receive service from DEF.[6] FIPUG provided testimony that its members will be directly and substantially affected by the outcome of the docket. At the standing hearing, FIPUG witness Pollock testified that a substantial number of FIPUG members purchase electricity from DEF, and such members will be affected by the outcome of this docket.

OPC's characterization of FIPUG's purpose does not establish that FIPUG failed to satisfy the associational standing test. FIPUG seeks a determination concerning the rates and terms of service applicable to its members, which is appropriate for the association to request. Whether FIPUG's proposed interpretation of Section 366.043, F.S., is correct concerns the merits of the tariff proceeding, rather than whether FIPUG has standing to participate. Moreover, OPC's argument appears to take issue with FIPUG's substantive position or requested outcome in the case; it does not identify facts on standing showing that electricity rates and service fall outside FIPUG's general interests and activities. The Prehearing Officer applied the standard for associational standing when he determined that FIPUG established standing.

Because OPC failed to identify a point of fact or law overlooked by the Prehearing Officer in rendering his order, staff recommends that Section I of OPC's Motion be denied.

[4] Order No. PSC-2026-0238-PCO-EI, filed June 26, 2026.
[5] Order No. PSC-2026-0288-PCO-EI, filed August 24, 2026.
[6] Document No. 03192-2026, filed May 29, 2026.

2. *Whether the Prehearing Officer Overlooked and Failed to Consider Sections 120.57, 120.569, 90.604, 90.608(5), 90.608(6), 90.701, and 90.703, F.S.*

Positions of the Parties

OPC asserts that the Prehearing Officer failed to address any type of credibility determination under Chapter 90, F.S., or whether the Commission inappropriately relied on hearsay evidence as prohibited by Sections 120.57 and 120.569, F.S. Particularly, OPC takes issue with the reliability of FIPUG witness Jeffry Pollock's testimony, alleging witness Pollock relied upon uncorroborated hearsay and had a lack of personal knowledge of FIPUG's membership. OPC notes that the Prehearing Officer focused on witness Pollock's testimony when he asserted that a substantial number of FIPUG's members purchase electricity from DEF and that such members are among the largest DEF customers. Ultimately, OPC claims that the sole evidence of FIPUG's standing is witness Pollock's testimony, which it claims is unreliable because it is uncorroborated hearsay, and the witness had a lack of personal knowledge of FIPUG's membership.

FIPUG responded by arguing that it is ultimately the trier of fact who judges the credibility of witnesses, and deference is provided to the trier of fact. FIPUG asserts that witness Pollock testified from personal knowledge that he knew FIPUG's members, which supported participation in this case, including testimony that the majority of FIPUG's members are taking DEF service. FIPUG's argument is that witness Pollock affirmed the petition's factual allegations. FIPUG also cites its response to interrogatories served by OPC, which were entered into the record for the hearing on standing. The responses indicate that FIPUG has 15 members, a majority of whom purchase electricity from DEF.

Analysis and Conclusion

OPC's argument raises both witness credibility of witness Pollock and the legal sufficiency of the evidence by raising hearsay issues. The Prehearing Officer held a hearing on standing. Evidence was presented in the form of live testimony by witness Pollock. Section 120.57(1)(c), F.S., permits hearsay evidence to supplement or explain other evidence, but not to support a finding by itself unless it would be admissible over objection in civil actions. FIPUG's argument is that witness Pollock affirmed the petition's factual allegations is supported by the record.

As OPC points out in its Motion, a hearing officer's function is to "consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence."[7]

Staff believes the Prehearing Officer exercised his judgment by weighing all the evidence before him via prefiled testimony, live testimony and cross examination, presentation of evidence and exhibits, and briefs filed by the parties directly related to the issue of FIPUG's standing in this docket. OPC's disagreement with the Prehearing Officer's decision is not a legitimate basis for

[7] *Castro v. Dep't of Health*, 424 So. 3d 526, 532 (Fla. 1st DCA 2025) (citing *Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281-1283 (Fla. 1st DCA 1985)).

reconsideration of his decision to grant FIPUG intervention in this docket. It is reargument, which is not a sufficient bases for a motion for reconsideration.

Because OPC failed to identify a point of fact or law overlooked by the Prehearing Officer in rendering his order, staff recommends that Section II of OPC's Motion be denied.

3. Whether the Prehearing Officer Improperly Found Associational Standing for a Group Numbering Less than One

Positions of the Parties

OPC asserts that the Prehearing Officer failed to appropriately apply the *Florida Home Builders* test in his determination that FIPUG has standing in the DEF Large Load Docket. OPC argues that without identifying any members, FIPUG cannot establish that any affected members exist, much less a substantial number. OPC distinguishes the absence of a fixed numerical threshold from an absence of proof of affected members.

FIPUG argues its testimony shows that a substantial number of its members purchase DEF electricity. FIPUG also responds by citing to its responses to interrogatories served by OPC, which were entered into the record for the hearing on standing. The responses indicate that FIPUG has 15 members, a majority of whom purchase electricity from DEF.

Analysis and Conclusion

As the Order on Standing stated, the Prehearing Officer determined that:

> FIPUG's prefiled testimony established that it represents members who are DEF customers and whose interests could reasonably be affected by the Prehearing Officer's decision in this proceeding. Although FIPUG did not identify individual members by name, the *Florida Home Builders* test does not impose a specific numerical threshold or require that affected members be individually identified in every case.[8]

Staff believes the Prehearing Officer granted FIPUG standing based on the evidence presented by all of the parties. OPC has not provided support that FIPUG was required to provide a specific number of its affected customers in this proceeding. OPC has not provided authority establishing that FIPUG was required to identify individual affected members by name to prove associational standing in this proceeding. OPC raised that argument in its post-hearing brief, and the Prehearing Officer considered and rejected it. OPC's disagreement with the Prehearing Officer's decision is reargument on this point and is not a legitimate basis for reconsideration.

Because OPC failed to identify a point of fact or law overlooked by the Prehearing Officer in rendering his order, staff recommends that Section III of OPC's Motion be denied.

[8] Order No. PSC-2026-0288-PCO-EI.

4. Whether there was Insufficient Evidence to Support FIPUG's Standing

Positions of the Parties

OPC argues that the Prehearing Officer bears responsibility for weighing evidence and assessing witness credibility when resolving disputed factual matters. Further, an intervenor cannot satisfy its burden of proof on standing merely by offering testimony from a purportedly qualified witness. If a witness is impeached, it does not automatically require rejection of a witness's testimony. However, the Prehearing Officer remains responsible for determining what weight that testimony deserves, weighing the testimony by considering the evidence as a whole. OPC contends that "an unweighted impeached fact witness cannot carry that burden to establish that FIPUG, in this docket had established in the record that '… a substantial number of its members, although not necessarily a majority, are substantially affected…'"

FIPUG agrees that the trier of fact judges the credibility of witnesses and that deference is provided to the trier of fact. However, FIPUG argues that OPC's disagreement with a finding of fact is not a proper basis to seek reconsideration. Further, FIPUG states that OPC fails to consider Exhibit 49, admitted without objection during the standing hearing, which state that a majority of FIPUG's 15 members receive electric service from Duke Energy Florida, LLC.

Analysis and Conclusion

As addressed in point three above, the Prehearing Officer determined that FIPUG established that it represents members who are DEF customers and whose interests could reasonably be affected by the proceeding. Although FIPUG did not identify individual members by name, the *Florida Home Builders* test does not impose a specific numerical threshold or require that affected members be individually identified in every case.[9]

The absence of a fixed numerical threshold does not eliminate FIPUG's obligation to establish that a substantial number of its members may be substantially affected. Here, the Prehearing Officer considered Pollock's testimony together with FIPUG's admitted interrogatory responses identifying 15 members, a majority of whom purchase electricity from DEF. OPC has not identified an overlooked requirement that those affected members also be individually named under the circumstances of this proceeding.

Staff believes the Prehearing Officer granted FIPUG standing in the DEF Large Load Docket by reaching ultimate findings of facts, based upon weighing evidence presented by all of the parties. OPC's disagreement with the Prehearing Officer's findings of fact is not a legitimate basis for reconsideration of its decision to allow FIPUG intervention in this docket. It is reargument, which is not a sufficient basis for a motion for reconsideration.

Because OPC failed to identify a point of fact or law overlooked by the Prehearing Officer in rendering his order, staff recommends that Section IV of OPC's Motion be denied.

[9] Order No. PSC-2026-0288-PCO-EI.

5. Whether the Commission Failed to Give Parties Due Process

Positions of the Parties

OPC argues that the Commission violated due process by having insufficient cause to deviate from the originally-established hearing procedures in order to allow the Prehearing Officer to conduct an evidentiary hearing to rule on the standing of intervenors in the Duke Large Load Docket. OPC also alleges that statements and arguments made by FIPUG at the Prehearing Conference regarding a possible stipulation between FIPUG and DEF regarding standing established improper bias by the Prehearing Officer. Finally, OPC argues that FIPUG's "disruptions" at the Prehearing Conference resulted in the Prehearing Officer's decision to conduct a bifurcated hearing to address standing prior to the full evidentiary hearing in the Duke Large Load Docket.

FIPUG responds by noting OPC's statement in its response to FIPUG's Petition to Intervene, within which OPC stated that FIPUG's intervention is a factual controversy that may necessitate a preliminary evidentiary hearing before the Commission or Prehearing Officer on issues surrounding FIPUG's standing. FIPUG asserts that OPC did not object to or seek reconsideration of the order establishing the bifurcated hearing. Separately, OPC's original opposition had contemplated a preliminary evidentiary hearing before either the Commission or the Prehearing Officer.

Analysis and Conclusion

In the prehearing conference when the parties' raised their issues with standing, DEF specifically advocated that a better process would be to have a separate standing hearing, rather than take standing up during the evidentiary hearing. The Prehearing Officer asked for staff's response to that position and gave the parties an opportunity to respond well. FR's position was that the Prehearing Officer could have a bifurcated process to have an evidentiary hearing on statement earlier than the hearing on the merits. OPC's response was:

> I do think that the General Counsel's Office is on to something when they talk about bifurcating. I think that no time is lost, no effort is lost-- many efficiencies are gained if you make that determination before you do everything else that we are going to do in that hearing. And at most, we are looking at two witnesses.

No party timely objected to this process, nor timely filed a request for reconsideration of the order scheduling the standing hearing. As such, staff believes the Prehearing Officer's decision to have a separate hearing on standing prior to the evidentiary hearing was consistent with the parties' preferences, and that OPC waived its opportunity to object to that process.

Moreover, even if the issue was not deemed to be waived, staff believes the Prehearing Officer acted within his authority to bifurcate the hearing process and conduct an evidentiary hearing regarding standing. It is well established in Florida law that "[t]he fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard." *Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1154 (Fla. 2014). In administrative hearings where substantial interests of a party are determined by an agency and where there are

disputed issues of material fact, an agency must provide parties "an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative." Sections 120.569 and 120.57(1)(b), F.S. The standing hearing was noticed, all parties made opening statements, presented witnesses and exhibits, conducted cross examination of witnesses, and briefed the issues of standing for all the relevant intervenors.

OPC's allegations concerning the discussion of a possible stipulation and FIPUG's conduct at the Prehearing Conference do not, without more, establish that the Prehearing Officer prejudged standing or denied OPC an opportunity to contest it. OPC's disagreement with FIPUG's participation does not, by itself, establish a denial of due process. The relevant question is whether the procedure employed deprived OPC of a meaningful opportunity to present its objections, rather than whether the Prehearing Officer ultimately accepted those objections. Staff believes there was no due process error. The Prehearing Officer ruled upon FIPUG's standing after reaching ultimate findings of facts based on the evidence presented. Therefore, OPC's disagreement with the Prehearing Officer's findings of fact is not a legitimate basis for reconsideration of its decision to allow FIPUG intervention in this docket.

Because OPC failed to identify a point of fact or law overlooked by the Commission in rendering its order, staff recommends that Section V of the Motion for Reconsideration be denied.

Conclusion

OPC's Motion should be denied in its entirety because it consists of reargument and fails to raise a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering his decision.

Issue 3: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final resolution of DEF's petition for a large load tariff. (Thompson, Crawford)

Staff Analysis: This docket should remain open pending the Commission's final resolution of DEF's petition for a large load tariff.