

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Matthew by Florida Power & Light Company.

DOCKET NO. 20160251-EI
ORDER NO. PSC-2018-0176-PCO-EI
ISSUED: April 5, 2018

ORDER GRANTING MOTION TO INTERVENE

On December 29, 2016, pursuant to Section 366.076(1), Florida Statutes (F.S.), Florida Power & Light Company (FPL) filed its Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Matthew. By Order No. PSC-17-0055-PCO-EI, issued on February 20, 2017, the Commission approved the requested 2017 Interim Storm Restoration Recovery Charge for a period of 12 months and required that an evidentiary hearing be held at a later date to determine actual Hurricane Matthew storm costs, actual revenues collected pursuant to the surcharge, and calculation of a refund or an additional charge, if warranted. A hearing has now been set for May 22-23, 2018.

Motion for Intervention

By motion dated March 29, 2018, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF states that it has a substantial interest as it is an ad hoc association of businesses who provide retail goods and services to Florida citizens. FRF has more than 8,000 members, many of whom purchase retail electricity from FPL. FRF asserts that the cost of electricity constitutes a significant portion of its members' overall cost of business and that its members require adequate, fair, and reasonably-priced electricity. FRF, citing Agrico Chemical Company v. Department of Environmental Regulation (Agrico), 406 So. 2d 478 (Fla. 2d DCA 1981), contends that its interests are of the type this proceeding is designed to protect, since its purpose is to evaluate FPL's request to recover storm related restoration costs resulting from Hurricane Matthew. Therefore, FRF concludes that the purpose of this proceeding coincides with FRF's substantial interests: to ensure that its members are charged rates by FPL that are fair, just, and reasonable.

Standard 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 petition for leave to intervene. Petitions for leave to intervene must be filed at least 20 days before the final hearing, must conform with Rule 28-106.201(2), 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 two-prong standing test set forth in Agrico, 406 So. 2d 478 at 482. The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) that this 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. 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).

The test for associational standing was established 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 also based on the basic standing principles established in Agrico. 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 is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Motion to Intervene filed by Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that pursuant to Rule 25-22.039, F.A.C., FRF 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:

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By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 5th day of April, 2018.



JULIE I. BROWN

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.