

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to approve second solar base rate adjustment (SoBRA), effective January 1, 2019, by Tampa Electric Company.

DOCKET NO. 20180133-EI
ORDER NO. PSC-2018-0387-PCO-EI
ISSUED: August 2, 2018

ORDER GRANTING INTERVENTION TO
FLORIDA INDUSTRIAL POWER USERS GROUP

In 2017, the Commission approved Tampa Electric Company's (TECO) 2017 Amended and Restated Stipulation and Settlement Agreement (2017 Settlement Agreement) that included a Solar Base Rate Adjustment (SoBRA) mechanism which provides for the recovery of costs associated with solar projects that meet the criteria laid out in the 2017 Settlement Agreement.¹ As contemplated in the 2017 Settlement Agreement, on June 29, 2018, TECO filed its Petition for Limited Proceeding to Approve Second SoBRA. By motion dated July 10, 2018, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. This docket is scheduled for hearing on October 9, 2018.

Petition for Intervention

FIPUG states that it is an ad hoc association consisting of industrial users of electricity in Florida, many of whom receive electricity from TECO. FIPUG asserts that the cost of electricity constitutes a significant portion of FIPUG's members' overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. In this case, the Commission will consider TECO's request to recover the costs for certain solar power facilities. These cost recoveries sought by TECO, if approved, will be recovered from TECO's customers, including FIPUG's members. FIPUG, citing Agrico Chemical Company v. Department of Environmental Regulation (Agrico), 406 So. 2d 478 (Fla. 2d DCA 1981), asserts that its interests are of the type that this proceeding is designed to protect. The purpose of the proceeding is to evaluate TECO's request to recover costs for certain solar power facilities. Thus, the purpose of the proceeding coincides with FIPUG's substantial interests, which is to ensure that its members are charged fair, just and reasonable rates for power. There are no objections raised or filed in opposition to FIPUG's intervention.

Standards for Intervention

Pursuant to Rule 28-106.205, 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

¹ Order No. 2017-0456-S-EI, issued November 27, 2017, in Docket No. 20170210-EI, *In re: Petition for limited proceeding to approve 2017 amended and restated stipulation and settlement agreement, by Tampa Electric Company.*

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, an associational intervenor must meet the three-prong standing test set forth 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 based on the basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).² 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.

Conclusion

I agree that FIPUG's intervention in this docket to evaluate TECO's request to recover costs for certain solar power facilities falls within the scope of interests that this proceeding is designed to protect and that the purpose of the proceeding coincides with FIPUG's substantial interests. FIPUG's petition to intervene in this docket is granted.

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 set forth in the body of this Order. It is further

ORDERED that FIPUG 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:

² 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).

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Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.,
118 North Gadsden St. #100
Tallahassee, FL 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 2nd day
of August, 2018



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.

WLT

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.