

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power  
cost recovery clause with  
generating performance incentive  
factor.

DOCKET NO. 030001-EI  
ORDER NO. PSC-03-1258-PCO-EI  
ISSUED: November 7, 2003

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

By Petition filed October 23, 2003, CSX Transportation (CSX) requests leave to intervene in this proceeding. In support of its Petition, CSX states that it has a substantial interest in the outcome of this proceeding. CSX states that it owns and operates a significant number of railroad facilities in Florida and provides rail transportation to several Florida electric utilities and other Florida industrial customers. CSX asserts that it is a significant customer of Tampa Electric Company (Tampa Electric), because it is served under several different accounts, under different rate schedules, at several different points of delivery located within Tampa Electric's service area. CSX argues that, as a substantial retail electric customer of Tampa Electric, it is subject to the fuel and purchased power cost recovery charges that the Commission will establish in this proceeding. According to CSX, its interests will be immediately and adversely affected if Tampa Electric's proposed rates are approved. CSX asserts that Tampa Electric's proposed rates are unfair, unjust, and unreasonable in that they include costs to be paid to Tampa Electric's affiliate, TECO Transport, that are unreasonably and imprudently high for the transport of coal to Tampa Electric's Big Bend electric generating station.

On October 28, 2003, Tampa Electric filed its answer in opposition to the Petition. According to Tampa Electric, CSX lacks standing to intervene in this docket under the generally applicable test for standing to participate in administrative proceedings as set forth in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981). Tampa Electric asserts that CSX does not satisfy the portion of the Agrico test which requires suffering injury in fact which is of sufficient immediacy to entitle the party to a hearing under Section 120.57,

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Florida Statutes. Tampa Electric argues that CSX's intervention is an effort to enhance its competitive interests by attempting to delay this proceeding and exact retribution on Tampa Electric for not procuring its coal transportation services from CSX. In addition, Tampa Electric argues that CSX does not satisfy the portion of the Agrico test which requires that the injury asserted by the petitioner be of a type or nature which the proceeding is designed to protect. According to Tampa Electric, CSX's real interest is not as a customer but as a competitor. Tampa Electric states that CSX's competitive economic interest is beyond the scope of this proceeding.


Having reviewed the Petition and Response, it appears that CSX's substantial interests as a retail customer of Tampa Electric may be affected by this proceeding. Therefore, CSX's petition to intervene is granted so that CSX may represent such interest. Pursuant to Rule 25-22.039, Florida Administrative Code, CSX takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as prehearing officer, that the Petition to Intervene, filed by CSX Transportation, is hereby granted. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents that are hereinafter filed in this proceeding, to Robert Scheffel Wright, Esquire, and John T. LaVia, III, Esquire, 310 West College Avenue, Post Office Box 271, Tallahassee, Florida 32302.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 7th day of November, 2003.

 for Commissioner Braulio L. Baez

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BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

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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 Director, Division of the Commission Clerk and

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Administrative Services, in the form prescribed by Rule 25-22.060, 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.