

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI
ORDER NO. PSC-08-0296-PCO-EI
ISSUED: May 7, 2008

ORDER GRANTING INTERVENTION

On February 29, 2008, and March 3, 2008, respectively, Progress Energy Florida, Inc. (PEF) and Florida Power & Light Company (FPL) each filed petitions to seek a prudence review of and to recover certain costs associated with construction of their uprates of existing nuclear plants pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.) The petitions were filed in this Nuclear Cost Recovery Clause (NCRC) docket. This is the first year of this newly established roll-over docket.

Petition for Intervention

By petition dated March 20, 2008, AARP requested permission to intervene in this proceeding. AARP asserts that it is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older. AARP states that it has approximately 2.9 million members in Florida. According to AARP, a significant number of its Florida members reside in either FPL or PEF's service territories and take their electric service from these two utilities. AARP contends that many of its members will be substantially affected by any action the Commission takes in the NCRC docket. AARP states that its members' substantial interests are affected because the projects that are subject to this proceeding have substantial costs that the utilities intend be borne by their customers. The costs currently proposed by FPL and PEF for recovery in the NCRC will affect the substantial interests of AARP's members served by FPL and PEF by increasing the members' electric bills, thus reducing the monies they have to spend on their other needs. AARP concludes that AARP's members taking retail electric service from FPL and PEF have interests of the type this proceeding is designed to protect. No party has objected to AARP's petition, and the time for doing so has expired.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 five (5) 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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

To have standing, the intervenor must meet the two prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). 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 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. 3rd 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).

Further, 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.

Analysis & Ruling

It appears that AARP meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. According to AARP, a very significant number of its Florida members are retail residential customers of either FPL or PEF. AARP argues that these members' substantial interests will be materially affected by any action the Commission takes in the NCRC proceedings as those actions will necessarily include retail rate increases in the form of payments for costs approved in the NCRC. Therefore, AARP's members meet the two prong standing test of Agrico.

With respect to the first prong of the associational standing test, AARP contends that a substantial number of its Florida membership reside in FPL and PEF's service territories and will be directly affected by any Commission authorized rate increases. With respect to the second prong of the associational standing test, the subject matter appears to be within AARP's general scope of interest and activity. AARP states it is a nonprofit organization representing the needs and interests of persons age 50 and older. AARP contends that the costs currently sought for recovery by FPL and PEF will increase AARP members' electric bills, thus reducing the monies they have to spend on other needs. Furthermore, AARP has been granted party status in similar proceedings, such as the Commission's annual fuel clause proceedings.¹ As for the third prong of the associational standing test, AARP asserts that the Commission will be required to

¹ See, Docket Nos. 080001-EI, 060001-EI, and 050001-EI, In re: Fuel and purchased power cost recovery clause and generating performance incentive factor, in which AARP participated as an intervenor on issues regarding electric rates its members would pay for the succeeding years.

determine if the costs for improvements of nuclear generating units are reasonable and prudent and thus, appropriate for cost recovery under the NCRC. AARP believes it is reasonable to conclude that there may be disputed issues of material fact related to the reasonableness and prudence of the amounts sought for recovery. AARP asserts that its purpose is to address the needs and interests of its members. Granting intervention to AARP in the NCRC is consistent with prior Commission decisions granting or continuing party status to AARP in fuel cost recovery clause proceedings.

Because AARP meets the two prong standing test established in Agrico as well as the three prong associational standing test established in Florida Home Builders, AARP's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., AARP takes the case as it finds it.

Based on the foregoing, it is


ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Petition to Intervene filed by AARP is hereby granted. 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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AARP
200 West College Street
Tallahassee, Florida 32301

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 7th
day of May, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

LCB

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 25-22.060, 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.