

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080001-EI
ORDER NO. PSC-08-0487-PCO-EI
ISSUED: August 1, 2008

ORDER GRANTING INTERVENTION TO
FLORIDA RETAIL FEDERATION

As part of the Commission's continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings, this docket was opened. A hearing has been set for November 4-6, 2008, in this docket. The Prehearing Conference is set for October 20, 2008, at which time the issues and positions of the parties will be finalized as more specifically set out in the Order Establishing Procedure, Order No. PSC-08-0148-PCO-EI, issued March 11, 2008, in this docket.

Petition for Intervention

By petition, dated June 18, 2008, Florida Retail Federation (FRF) has requested permission to intervene in this proceeding. FRF states that it is an established association with more than 10,000 members in Florida, most of whom are retail customers of one or more of the investor-owned utilities (IOUs). FRF requests that it be permitted to intervene to protect its members' interests in having the Commission determine the fair, just, and reasonable rates to be charged by the IOUs, and in having the Commission take such other action to protect the interests of FRF's members. FRF asserts that its members' interests will be directly affected by the Commission's decisions in this docket. FRF also states that its members' substantial interests are of sufficient immediacy to entitle FRF to participate. FRF concludes that it is entitled to intervene to protect its members' substantial interests.

Florida Power & Light Company's Response to Petition

On June 25, 2008, Florida Power & Light Company (FPL) filed a response to FRF's Petition to Intervene. Although FPL did not object to FRF's intervention in the docket, FPL states that it disputes certain ultimate facts alleged by FRF in its Petition to Intervene. FPL asserts that the purpose of its response to the petition was to correct the facts contained in FRF's petition which FPL believes to be inaccurate.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 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

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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 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 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. 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 FRF meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FRF asserts that it is the representative of a large number of its more than 10,000 members who are retail electric customers of the IOUs. According to FRF, these members' substantial interests will be directly affected by the Commission's decisions regarding the IOUs' fuel charges. FRF concludes that the interests that it seeks to protect are of sufficient immediacy to warrant intervention. FRF asserts that the nature of its members' interests in having the Commission set fair, just, reasonable, and not unduly discriminatory rates is the type of interest that the fuel proceeding is designed to protect.

With respect to the first prong of the associational standing test, FRF states that a substantial number of FRF's more than 10,000 members are located in the IOUs' service areas and those members receive their electric service from IOUs. FRF's members are charged the applicable retail rates, including the fuel charges, of the respective IOUs. According to FRF, it meets the second prong of the associational standing test because FRF exists to represent its members' interests in a number of venues, including before the Florida Public Service Commission. FRF further asserts that it has actually participated as an intervenor in other fuel

cost recovery proceedings, and was an intervenor in both FPL's 2005 general rate case and Progress Energy Florida, Inc.'s 2005 general rate case. As to the final prong of the associational test, FRF states that the relief requested, intervention and the lowest rates consistent with the Commission's governing law, is the type of relief that will apply to all of the FRF's members in the same way. FRF concludes that the requested relief is therefore of the type that is appropriate for an association to obtain on behalf of its members.

FRF raised certain issues of disputed fact that it asserts will be considered in the fuel proceeding. FPL disputes the accuracy of some the facts raised in FRF's Petition to Intervene. Issue development is an ongoing process. While issues should be germane to this proceeding, disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference. Likewise, the accuracy and veracity of facts is a determination to be made by the Commission during its fuel hearing in November.

Having reviewed the Petition to Intervene, it appears that FRF's substantial interests may be affected by this proceeding. Therefore, FRF's Petition to Intervene shall be granted. Pursuant to Rule 25-22.039, F.A.C., FRF 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 Florida Retail Federation 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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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 1st
day of August, 2008.


KATRINA J. McMURRIAN
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 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.