

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-08-0733-PCO-EI
ISSUED: November 3, 2008

ORDER DENYING PETITION TO INTERVENE

As part of the Commission's continuing fuel and purchased power cost recovery and generating performance incentive factor proceedings, this docket was opened, and a hearing has been set for November 4-6, 2008.

Petition for Intervention

On November 3, 2008, Saporito Energy Consultants (SEC) and its president, Mr. Thomas Saporito, filed a Petition to Intervene (Petition) in this docket. According to the Petition, SEC is a privately held entity dedicated to addressing the needs and interests of the environment by providing energy consulting services to individuals and corporations. The Petition states that SEC's business plan represents the interests of residents in the State of Florida who reside in either Florida Power & Light Company (FPL) or Progress Energy Florida, Inc.'s (PEF) service territory. The Petition further states that many in SEC's customer base, including Mr. Saporito, will be substantially affected by any action the Commission takes in this docket, "which will necessarily include retail rate increases in the form of Nuclear Power Plant Cost Recovery Clause payments if the utilities' requested relief is granted." The Petition therefore appears to raise issues related to FPL and PEF's cost recovery pursuant to the Nuclear Cost Recovery Clause docket, Docket No. 080009-EI. However, the Commission has already held a formal administrative hearing in Docket No. 080009-EI, on September 11, 2008, to determine whether FPL and PEF should be allowed to recover costs through the Nuclear Cost Recovery Clause.¹ The instant docket, Docket No. 080001-EI, was not established as a forum to resolve the issues raised in the Petition.

Commission Rule on Intervention

Commission Rule 25-22.039, Florida Administrative Code (F.A.C.), implements the standards for participation as an intervenor in an administrative proceeding. The rule provides as follows:

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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), F.A.C., and must include

¹ The Commission made its post-hearing decision regarding FPL and PEF's ability to recover costs pursuant to the Nuclear Cost Recovery Clause at its October 14, 2008, Agenda Conference.

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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. (Emphasis added).


Ruling

Mr. Saporito and SEC's Petition is denied as being untimely filed pursuant to Rule 25-22.039, F.A.C., which requires that petitions for leave to intervene be filed at least five days before the final hearing. The hearing for Docket No. 080009-EI took place on September 11, 2008; the hearing for Docket No. 080001-EI is scheduled to begin on November 4, 2008. Accordingly, the Petition, which was filed on November 3, 2008, is untimely whether it was intended to be filed in Docket No. 080009-EI or 080001-EI.

Based on the foregoing, it is, therefore,

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that the Petition to Intervene filed by Saporito Energy Consultants and Mr. Thomas Saporito is hereby denied.

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 3rd day of November, 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.