

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida  
Power & Light Company.

DOCKET NO. 080677-EI  
ORDER NO. PSC-09-0282-PCO-EI  
ISSUED: April 29, 2009

ORDER GRANTING PETITION TO INTERVENE

On November 17, 2008, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2009 for an increase in rates effective January 1, 2010. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., FPL filed the petition for an increase in rates on March 18, 2009.

Petition for Intervention

By petition dated April 14, 2009, the City of South Daytona, Florida (the City), requested permission to intervene in this proceeding. The City states that it is located in Volusia County, Florida, and is a customer of FPL. The City contends that it currently pays a substantial amount of money to FPL for electric service, and that this proceeding will determine the rates that the City is required to pay FPL for electric service beginning in January 2010. The City submits that its interest in having the Commission set rates for FPL that are fair, just, reasonable, and not unduly discriminatory is an interest that this rate proceeding is designed to protect. No party has filed an objection to the City'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, conform with Rule 28-106.201(2), F.A.C., and 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, 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 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) 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

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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).

Analysis & Ruling

It appears that the City meets the two-prong standing test in Agrico. The City asserts that it is an FPL customer who pays significant amounts of money to FPL for electric service. The City contends that if a rate increase is approved, the City's electricity costs will rise. The City further states that this is the type of proceeding designed to protect its interest in receiving fair, just, reasonable, and not unduly discriminatory rates. Therefore, the City meets the two-prong standing test of Agrico. Accordingly, the City's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., the City 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 the City of South Daytona, Florida, is hereby granted as set forth in the body of this Order. 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 29th  
day of April, 2009.

  
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 25-22.0376, 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.