

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress Energy Florida, Inc.

DOCKET NO. 090079-EI

In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

DOCKET NO. 090144-EI

In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.

DOCKET NO. 090145-EI

ORDER NO. PSC-09-0620-PCO-EI

ISSUED: September 14, 2009

ORDER GRANTING PETITION TO INTERVENE ON LIMITED BASIS

On February 12, 2009, Progress Energy Florida, Inc. (PEF) 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 a general rate increase 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., PEF filed a petition for an increase in rates on March 20, 2009.

Petition for Intervention

By petition dated August 10, 2009, Martin Drango, Mark Rigsby, Gary Roebuck, and James Terry, Jr. (PEF Employees) requested permission to intervene in this proceeding for the limited purpose of opposing Staff's Motion to Compel and any other efforts to cause PEF to disclose to the Commission or other third parties the amount of PEF Employees' compensation or other personal financial information. PEF and PEF Employees filed a joint Response to Motion to Compel, Motion for Protective Order, and Conditional Motion for Stay (Response in Opposition) on August 10, 2009.

PEF Employees state that they are current employees of PEF whose individual compensation has been maintained by PEF as confidential. PEF Employees assert that with the exception of a small number of PEF executives and employees who have responsibilities relating to the setting and administration of compensation, their compensation information has not been disclosed to third parties inside or outside of PEF, but has been made available on a confidential basis to the Commission. According to PEF Employees, that compensation information, as well as the additional information that is subject to Staff's Motion to Compel, would possibly be made available to the public if the Motion to Compel is granted.

DOCUMENT NUMBER-DATE

09521 SEP 14 8

FPSC-COMMISSION CLERK

PEF Employees contend that the company has maintained the confidentiality of employee compensation information because they are protected from disclosure of personal financial information by the fundamental right of privacy guaranteed by Article I, Section 23 of the Florida Constitution. PEF Employees state that they have a substantial interest in this matter because disclosure of compensation information would undermine this privacy interest.

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 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 PEF Employees meet the two-prong standing test in Agrico. PEF Employees assert that they are current employees of PEF, whose substantial interests will be affected by this Commission's decision whether to grant Staff's Motion to Compel. Specifically, PEF Employees maintain that disclosure of employment compensation information, which is the subject of Staff's Motion to Compel, will violate their fundamental right to privacy. PEF Employees further state that this is the type of proceeding designed to protect their interests. Therefore, PEF Employees meet the two-prong standing test of Agrico. Accordingly, PEF Employees' petition for intervention shall be granted for the limited purpose of opposing Staff's Motion to Compel and any other efforts to cause PEF to disclose to the Commission or other third parties the amount of PEF Employees' compensation or other personal financial information. Pursuant to Rule 25-22.039, F.A.C., PEF Employees take the case as they find it.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by Martin Drango, Mark Rigsby, Gary Roebuck, and James Terry, Jr. 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:

R. Alexander Glenn
John T. Burnett
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733
Telephone: (727) 820-5184
Facsimile: (727) 820-5249
alex.glenn@pgnmail.com
john.burnett@pgn.mail.com

James Michael Walls
Dianne M. Triplett
Carlton Fields
P.O. Box 3239
Tampa, Florida 33607-5736
Telephone: (813) 223-7000
Facsimile: (813) 229-4133
mwalls@carltonfields.com
dtriplett@carltonfields.com

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 14th day of September, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

CMK

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.