

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.

DOCKET NO. 140226-EI  
ORDER NO. PSC-15-0247-PCO-EI  
ISSUED: June 12, 2015

ORDER GRANTING INTERVENTION

On November 25, 2014, pursuant to Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, the Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart), and Florida Industrial Power Users Group (FIPUG). The Order Establishing Procedure, Order No. PSC-15-0149-PCO-EI issued on April 1, 2015, established a Prehearing Conference for July 7, 2015, and an administrative hearing has been set for July 22-23, 2015.

Petition for Intervention

By petition, dated June 5, 2015, White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate) has requested permission to intervene in this proceeding. PCS Phosphate is a manufacturer of fertilizer product with plants and operations located within Duke Energy Florida's (DEF) electric service territory. PCS Phosphate asserts that as a large customer of DEF, it receives service under various DEF rate schedules.

PSC Phosphate contends that, in this proceeding, the Commission will review proposals to redesign the Energy Conservation Cost Recovery (ECCR) program. PSC Phosphate also asserts that the proposed changes would distinguish between charges for energy efficiency and charges for demand side management and would allow qualifying large non-residential customers to opt out of the energy efficiency portion of the ECCR charge, which includes DEF. PSC Phosphate contends that as a large customer of DEF that is subject to ECCR cost recovery, it may be eligible to opt-out of the ECCR energy efficiency charges through self-directed efficiency actions under the proposed modifications to the ECCR. No party has filed an objection to PCS Phosphate's Petition, and the time for doing so has expired.

Standard 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 days before the evidentiary 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 by 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).

#### Analysis & Ruling

It appears that PCS Phosphate satisfies the two-prong standing test established in Agrico. PCS Phosphate asserts that it is an industrial customer located within DEF's electric service territory and that its substantial interests will be directly and substantially affected by the Commission's decisions on proposed changes to the ECCR program. Based on the foregoing analysis, PCS Phosphate's standing in this proceeding has been established. Pursuant to Rule 25-22.039, F.A.C., PCS Phosphate takes the case as it finds it.


Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that White Springs Agriculture Chemicals, Inc. d/b/a PCS-Phosphate Petition to Intervene is hereby granted as set forth herein. 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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Owen J. Kopon  
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By ORDER of Chairman Art Graham, as Prehearing Officer, this 12th day  
of June, 2015.



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ART GRAHAM  
Chairman and Prehearing Officer  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.