

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company.

DOCKET NO. 150075-EI
ORDER NO. PSC-15-0295-PCO-EI
ISSUED: July 20, 2015

ORDER DENYING INTERVENTION

On March 6, 2015, pursuant to Section 366.06, Florida Statutes (F.S.), Florida Power & Light Company (FPL) filed its Petition for approval of its arrangement to mitigate the impact of its power purchase obligation with Cedar Bay Generating Plant (Cedar Bay). The Office of Public Counsel and the Florida Industrial Power Users Group (FIPUG) have intervened.¹ By petition, dated July 1, 2015, the Florida Audubon Society, Inc. (FAS) has also requested permission to intervene in this proceeding.

Petition for Intervention

In its petition, FAS states that it has a substantial interest as a not-for-profit organization dedicated to restoring and conserving natural ecosystems, focusing on birds and their habits. FAS states that its members use and enjoy the wildlife, scenic, recreation and water resources of the Broward River, St. Johns River, and surrounding areas in and around Cedar Bay, and thus are directly and substantially affected by the outcome of these proceedings. FAS states that through its substantial interest in protecting the environment and natural resources that its members utilize, it has associational standing and should be permitted to intervene.

FAS also argues that it has “members in all 32 counties serviced by FPL, including 169 members in Nassau County, an area serviced solely by FPL.” FAS contends that it therefore has members who are ratepayers just like FIPUG’s members. Therefore, intervention should be granted on this ground as well.

Response in Opposition to Petition to Intervene

On July 7, 2015, FIPUG filed a response in opposition to FAS’s Petition to Intervene. FIPUG argues that FAS’s interest in the use and enjoyment of environmental resources and conservation of natural ecosystems are not within the purview of this Commission’s jurisdiction. FIPUG further argues that FAS’s interests are not within the zone of interests the statute authorizing this proceeding is intended to address.

In regards to FAS’s claim that it has ratepayers who may be affected by this Commission’s decision, FIPUG argues that FAS’s standing, if any, must be subordinate to the primary parties in this case. FIPUG states that FAS takes the case as it finds it and may not inject new or impermissible issues into the proceeding including issues of environmental

¹ Order Nos. PSC-15-0141-PCO-EI, issued March 25, 2015, and PSC-15-0144-PCO-EI, issued March 30, 2015.

restoration, conservation, protection, or FAS's members' use and enjoyment of environmental or recreational resources. FIPUG, in conclusion, contends that FAS's petition should be denied, or if allowed, granted only on a limited basis subordinate to the existing proceeding and to the exclusion of any and all of the environmental concerns raised by FAS in their petition.

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 (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 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 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).

To have associational standing, the intervenor must satisfy the test for associational standing set forth in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982) (for rule challenges), and extended to Section 120.57(1), F.S., hearings by Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982). 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. Florida Home Builders at 353.

Analysis & Ruling

FAS argues that its substantial interest in this proceeding is in protecting the environment and natural resources its members utilize. While it states that a number of its members are FPL customers, it does not allege that FAS is organized to represent the economic interests of its members.

The purpose of this docket is to determine whether FPL's proposal to mitigate the impact of its power purchase obligation with Cedar Bay would result in "reasonable and compensatory rates." While FPL's petition also alleges there are environmental benefits associated with its purchase of Cedar Bay, the relief sought in its petition is solely economic in nature. The Prehearing Order, after months of discovery by all parties, identified 11 separate issues, all of which are economic in nature and are designed to address the impact FPL's proposal would have on its customers' rates.²

While some members of FAS may be FPL customers, the petition does not allege facts to show that their substantial interests will be affected by the outcome of this proceeding or that their environmental interests are those that this proceeding is designed to protect. Further, FAS has failed to establish associational standing because the petition does not demonstrate that the subject matter of this proceeding is within FAS's general scope of interest and activity. Accordingly, FAS's petition does not establish standing under either the Agrico or Florida Home Builders standards.

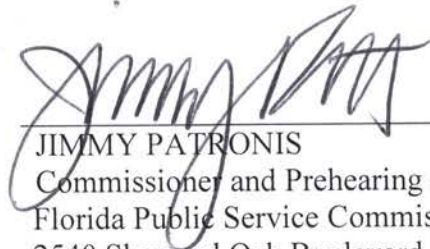
Upon review of the pleadings and consideration of the arguments. FAS's petition to intervene is denied.

Therefore, it is

ORDERED by Commissioner Jimmy Patronis, as Prehearing Officer, that the Petition to Intervene filed by Florida Audubon Society, Inc. is hereby denied.

² Order No. PSC-15-0294-PHO-EI, issued July 20, 2015.

By ORDER of Commissioner Jimmy Patronis, as Prehearing Officer, this 20th day
of July, 2015.



JIMMY PATRONIS
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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.