

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of IOUs' hedging practices.

DOCKET NO. 170057-EI
ORDER NO. PSC-17-0179-PCO-EI
ISSUED: May 17, 2017

ORDER GRANTING INTERVENTION

On February 28, 2017, this docket was opened by Commission staff to analyze the natural gas hedging practices of Florida's investor-owned utilities in order to determine whether natural gas hedging should be continued and if so, whether any changes should be made to current hedging practices. A staff workshop was held on February 21, 2017, in which Florida Power & Light Company (FPL), Duke Energy Florida, LLC (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf Power), the Office of Public Counsel (OPC), and several other interested parties, including the Florida Industrial Power Users Group (FIPUG) and Sierra Club participated. Post workshop comments were filed on March 6, 2017, by all four investor-owned utilities, FIPUG, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate (PCS) and the Sierra Club. This docket has been set for hearing on September 27 and 28, 2017.

Petition for Intervention

By petition, dated April 10, 2017, the Sierra Club has requested permission to intervene in this proceeding (Petition). The Sierra Club states that it is an ad hoc association having 30,000 members who reside in Florida and purchase power from FPL, DEF, Gulf Power and TECO. [Affidavits of Lesley G. Blackner, David Harbeitner, Sandra L. Adams and Wesley K. Bailey] The Sierra Club represents that its goal is reducing pollution through equitable public health and environmental safeguards, and through the rapid transition away from fossil fuel burning generation. The Sierra Club asserts that its interests are of the type that this proceeding is designed to protect since Florida's high reliance on natural gas as a generation fuel coupled with its current hedging practices has resulted in \$6.5 billion dollars in losses passed on directly to Florida ratepayers, many of whom are Sierra Club members. Therefore, the purpose of the hearing, the evaluation of natural gas hedging practices, coincides with the Sierra Club's substantial interests: to transition electric utilities away from burning fossil fuels and toward low cost, low risk clean energy alternatives. Finally, the Sierra Club states that it has contacted all the parties to this proceeding and that none of the parties take a position on its intervention at this time.

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 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 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....

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 prong of the test addresses the degree of injury. The second addresses 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).

The test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. 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.

Analysis & Ruling

Based upon a review of the materials provided by the Sierra Club, it appears that the Sierra Club meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. The Sierra Club’s members’ substantial interests are affected since the natural gas hedging policies to be set in this docket will directly affect their monthly electric bills through the fuel cost recovery charge. Therefore, the Sierra Club’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, the Sierra Club asserts that some of its members are located in Florida’s investor-owned utilities’ (IOU) service areas and receive electric service from the IOUs for which they are charged the IOUs’ applicable service rates. Accordingly, the Sierra Club states that its members will be substantially affected by this Commission’s determination of appropriate hedging policy in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within the Sierra Club’s general scope of interest and activity. The Sierra Club is an association organized with the purpose of advocating for the use of clean

energy alternatives to fossil fuel generation. Hedging can be seen as a means of controlling natural gas price volatility which locks in natural gas reliance and forestalls the transition to clean renewable generation, energy efficiency, and storage. As for the third prong of the associational standing test, the Sierra Club seeks intervention in this docket to represent the interests of its members before the Commission. The relief requested by the Sierra Club is of a type appropriate for an association to obtain on behalf of its members.

Because the Sierra Club meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, the Sierra Club's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., the Sierra Club takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by the Sierra Club 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:

Zachary M. Fabish, Staff Attorney
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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 17th day
of May, 2017.



RONALD A. BRISE
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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.

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.