

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Irma and Nate, by Duke Energy Florida, LLC.

DOCKET NO. 20170272-EI
ORDER NO. PSC-2018-0337-PCO-EI
ISSUED: July 5, 2018

ORDER GRANTING INTERVENTION

On December 28, 2017, pursuant to Rules 28-106.201 and 25-6.0143, Florida Administrative Code (F.A.C.), and Order No. PSC-2017-0451-AS-EU,¹ Duke Energy Florida, LLC (DEF) filed its Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricanes Irma and Nate. This docket is currently scheduled for hearing on October 15-19, 2018.

Petition for Intervention

By petition dated June 6, 2018, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs (PCS Phosphate) requested permission to intervene in this proceeding. PCS Phosphate states that it has a substantial interest as it is a manufacturer of fertilizer products with plants and operations located within DEF's service territory. PCS Phosphate asserts that as a large DEF customer, it receives electrical service under various DEF rate schedules. PCS Phosphate states that the cost of electricity affects its production and operating costs and overall industry competitiveness. PCS Phosphate contends that its interests are of the type this proceeding is designed to protect, because its purpose is to evaluate DEF's request to recover storm restoration costs related to Hurricanes Irma and Nate, and the replenishment of DEF's storm reserve. The time for filing objections to PCS Phosphate's petition for intervention has expired with no objections having been filed.

Standards for Intervention

Pursuant to Rule 28-106.205, 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 move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), 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.

¹ Order No. PSC-2017-0451-AS-EU, issued on November 20, 2017, in Docket No. 20170183-EI, In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

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. 2d DCA 1981). The intervenor must show that (1) he will suffer injury in fact that is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) the substantial injury is of a type or nature that 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. 3d 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).

PCS Phosphate meets the first prong of Agrico, because its production and operating costs will be affected by this proceeding. In addition, PCS Phosphate also meets the second prong of Agrico, because the purpose of this proceeding is to consider how the tax impacts will affect ratepayers. Based on the foregoing, PCS meets both prongs of Agrico and has standing to intervene.

Based on the above representations, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Petition to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs is hereby granted as set forth in the body of this Order. It is further

ORDERED that the PCS Phosphate takes the case as it finds it. 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 Julie I. Brown, as Prehearing Officer, this 5th day
of July, 2018.



JULIE I. BROWN

Commissioner 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.