

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida transco"), and their effect on FPL's retail rates.

DOCKET NO. 001148-EI
ORDER NO. PSC-01-0628-PCO-EI
ISSUED: March 14, 2001

ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED PETITION TO INTERVENE AND GRANTING IN PART AND DENYING IN PART AMENDED PETITION TO INTERVENE

By petition dated January 5, 2001, Dynegy Inc. ("Dynegy"), requested permission to intervene in this docket. On January 12, 2001, Florida Power & Light Company ("FPL") filed a response in opposition to Dynegy's petition. On February 2, 2001, Dynegy and Dynegy Midstream Services, Limited Partnership ("Dynegy Midstream") filed a motion for leave to file an amended petition to intervene along with an amended petition to intervene. FPL filed a response in opposition to the amended petition to intervene on February 9, 2001. On February 14, 2001, FPL filed a revised response in opposition to correct a typographical error in its February 9, 2001, filing.

In its petition, Dynegy argues that it will be directly and substantially affected by any action the Commission takes in this docket. Dynegy states it is a power marketer and merchant plant developer in Florida and purchases electric transmission services from both FPL and Entergy. Dynegy further states that it is a competitor of FPL in the wholesale power market in Florida. Dynegy contends that the merger and the market power created by the merger will increase the merged entity's ability to discriminate against customers like Dynegy, could result in increased prices, and will reduce or eliminate the availability of electrical transmission services to such customers. Dynegy also asserts that the Commission could, in this docket, establish retail rates for FPL in a manner that would lead to changes in wholesale and/or transmission rates charged by FPL to Dynegy.

FPL, in its response in opposition, argues that Dynegy has not made sufficient allegations to demonstrate that its substantial

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interests will be affected by this proceeding. FPL notes that this proceeding was initiated by the Commission to "consider the effect on FPL's retail rates of: 1) the planned formation of a regional transmission organization for peninsular Florida; and 2) FPL's planned merger with Entergy Corporation." FPL states that Dynegy does not allege it is a retail customer of FPL, only a wholesale transmission service customer. Thus, FPL argues, Dynegy has not alleged any direct interest that this proceeding is designed to protect. With regard to Dynegy's allegation that the Commission's determination of retail rates could lead to changes in wholesale and/or transmission rates charged by FPL to Dynegy, FPL asserts that this allegation is mere speculation about the potential occurrence of injurious events, an insufficient ground for standing.

In the motion for leave to file an amended petition to intervene, Dynegy states that since the filing of its initial petition to intervene it has been able to determine that its wholly-owned subsidiary, Dynegy Midstream, is a retail customer of FPL. Further, Dynegy asserts that it has identified commercial interests in the state of Florida that were not noted in its initial petition, specifically its business as a developer of industrial cogeneration facilities. FPL does not oppose this motion.

In their amended petition to intervene, Dynegy and Dynegy Midstream assert that both entities should be allowed to intervene. In addition to the allegations made in the initial petition, Dynegy asserts that its ability to compete for industrial cogeneration facilities in Florida will be directly impacted by any Commission decision in this case affecting FPL's retail rates, because retail rates constitute the price to beat in evaluating the viability of such facilities. Dynegy states that it represents the interests of Dynegy Midstream in these matters and contends that both entities should be allowed to intervene.

In its response in opposition to Dynegy and Dynegy Midstream's amended petition to intervene, as revised on February 14, 2001, FPL asserts that there is no basis for Dynegy or Dynegy Midstream to intervene in this docket. At pages four and five of its response in opposition, FPL contends that Dynegy Midstream has failed to allege an adequate basis for intervention because, as a "modest-sized electric customer taking service on a quite common rate"

Dynegy Midstream has alleged nothing more than "general concerns shared by the many other general-service ratepayers." FPL also challenges Dynegy Midstream's standing on the grounds that nothing in the conduct of this proceeding to date could result in injury in fact to Dynegy Midstream. FPL asserts that if the Commission were to determine from this proceeding to take agency action affecting Dynegy Midstream's substantial interests as a retail ratepayer, that would be the appropriate time for Dynegy Midstream to seek intervention. As to Dynegy's request to intervene, FPL reasserts the arguments presented in its response in opposition to the initial petition. Further, FPL argues that Dynegy should not be permitted to intervene on behalf of Dynegy Midstream, a separate legal entity able to represent its own interests in the proceeding as a retail ratepayer. Finally, FPL argues that Dynegy's interest in FPL's retail rates as a developer of industrial facilities is to ensure that FPL's retail rates are high enough to give Dynegy a competitive advantage. FPL asserts that this interest is contrary to the purpose of this proceeding and the Commission's regulation of electric utilities in general.

Upon consideration and noting no opposition from FPL, Dynegy and Dynegy Midstream's motion for leave to file an amended petition to intervene is granted. Upon review of the pleadings, Dynegy and Dynegy Midstream's amended petition to intervene is granted in part and denied in part, as discussed below.

For a potential intervenor to demonstrate that its substantial interests will be affected by a proceeding, the potential intervenor must show: (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing; and (b) the injury suffered is a type against which the proceeding is designed to protect. See, Ameristeel Corp. v. Clark, 691 So. 2d 473, 477 (Fla. 1997). This docket was opened to evaluate the effects of the proposed merger and the formation of a regional transmission organization on FPL's retail rates. The specific issues to be addressed have not yet been identified. Dynegy is not a retail customer of FPL. Given this fact, any actual or potential injury to Dynegy would not be addressed through this docket. In other words, Dynegy's substantial interests are not affected by the evaluation currently being conducted in this docket. Dynegy Midstream is a retail customer of FPL. Thus, its interest in the potential effect of this proceeding on its retail rates is

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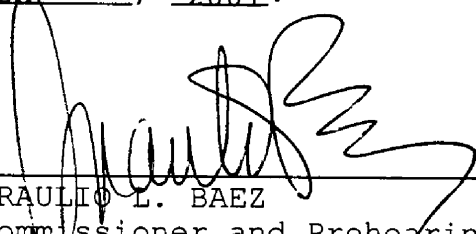
The denial of Dynegy's request to intervene is without prejudice. Should issues subsequently be identified that affect Dynegy's substantial interests, then Dynegy may petition for leave to intervene again. The grant of intervenor status to Dynegy Midstream shall not be construed to permit Dynegy's interests as a competitor and wholesale transmission customer of FPL to be represented.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the motion of Dynegy Inc. and Dynegy Midstream Services, Limited Partnership, for leave to file an amended petition to intervene is granted. It is further

ORDERED that the amended petition of Dynegy Inc. and Dynegy Midstream Services, Limited Partnership, to intervene in this docket is granted in part and denied in part, as set forth in the body of this Order.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 14th day of March, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, 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.