

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.

DOCKET NO. 070231-EI
ORDER NO. PSC-08-0486-PCO-EI
ISSUED: August 1, 2008

ORDER GRANTING PETITION TO INTERVENE
BY THE CITY OF SOUTH DAYTONA, FLORIDA

On April 2, 2007, Florida Power & Light Company (FPL) filed a petition for approval of 2007 revisions to FPL's underground residential distribution (URD) and underground commercial/industrial (UCD) tariffs. On October 16, 2007, the Commission issued Order No. PSC-07-0835-TRF-EI (Tariff Order) in this docket proposing to approve the revisions.

However, on November 6, 2007, before the Tariff Order became final, the Municipal Utilities Underground Consortium (MUUC) and the City of Coconut Creek (Coconut Creek) filed their timely petition protesting the Tariff Order (Protest). In the Protest, MUUC and Coconut Creek argued that FPL had not complied with the new requirements of Rule 25-6.078, Florida Administrative Code (F.A.C.),¹ and set forth what they designated as five disputed issues of material fact.

In response to this Protest, FPL filed a Motion to Dismiss on November 20, 2007, in which it contested both MUUC's and Coconut Creek's standing, and the appropriateness of Issue 4 raised in their Protest. On January 30, 2008, the City of South Daytona (City) filed its Petition to Intervene, in which it raised the same five issues raised by MUUC and Coconut Creek in their Protest. On February 7, 2008, FPL initially filed a response in opposition to the Petition to Intervene, but later advised staff that it only objected to Issue 4, which MUUC, Coconut Creek, and the City had all raised in their filings.

On February 11, 2008, before the Commission could rule on FPL's Motion to Dismiss and the City's Petition to Intervene, FPL filed its Agreed Motion for Continuance of Protest and Request for Formal Proceeding (Motion). This Motion was granted by Order No. PSC-08-0141-PCO-EI, issued on March 6, 2008. Pursuant to that Motion, FPL refiled its revisions to its URD and UCD tariffs on April 1, 2008. These revisions were purportedly in compliance with Rule 25-6.078, F.A.C., as amended, effective February 1, 2007. However, there is still some question of whether this latest filing of FPL is in compliance with the rule. Therefore, the City requests that the Commission rule on its Petition to Intervene.

¹ Rule 25-6.078, F.A.C., became effective February 1, 2007, and specifically requires that FPL take into account: (1) differences in the net present value of operational costs between overhead and underground facilities; and (2) the added cost of building the hypothetical overhead system to hardening standards.

DOCUMENT NUMBER-DATE

06755 AUG-18

FPSC-COMMISSION CLERK

Petition for Intervention

As stated above, the City has requested permission to intervene in this docket relating to FPL's proposed revisions to its URD and UCD tariffs. The City is located in Volusia County, Florida, and its residents are served by FPL.

The City's Petition asserts the City is currently engaged with FPL in projects to convert existing overhead distribution into underground (UG) distribution, and the City has recently completed the first phase of an undergrounding project. The City has plans for development and redevelopment projects within the City that will include undergrounding for many miles of existing distribution lines and possibly the installation of new UG distribution lines. The City is attempting to partner with FPL to ensure that these projects are completed as cost-effectively as possible. The City asserts that the charges and credits authorized in FPL's proposed tariff will affect the substantial interests of the City and its residents.

The City's Petition adopts the five issues of material fact which MUUC and Coconut Creek raised in their Protest. The City seeks to reserve the right to raise additional issues in accordance with the Commission's rules and procedural orders issued in this case.

FPL's Response

By e-mail dated July 9, 2008, FPL now states that it does not object to the City's Petition to Intervene in this docket. However, FPL asserts that, pursuant to Rule 25-22.039, F.A.C., the City must take this proceeding as it finds it, that Issue 4² is inconsistent with this requirement, and its inclusion would expand the proceeding beyond its proper scope. Accordingly, if the City is allowed to intervene, FPL asserts that the City should not be permitted to pursue that issue here.

Standard 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 for leave to intervene. Petitions for leave to intervene 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.

In order to establish standing, the intervenor must satisfy the two-prong standing test in Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) he will suffer injury in fact which is of sufficient immediacy to entitle

² Issue 4 in both MUUC and Coconut Creek's Protest and the City's Petition to Intervene states: Should new developments within a municipality qualify for the Governmental Adjustment Waiver credit, where the Local Government is willing to be the applicant for service in order to ensure that the wide-area benefits of undergrounding are realized, consistent with the purposes of the GAF tariff and FPL's Storm Secure Initiatives?

him to a Section 120.57, Florida Statutes, hearing; and (2) his substantial injury is of a type or nature which the proceeding is designed to protect. See id. The first aspect of the test deals with the degree of injury; the second deals with the nature of the injury. See id. The intervenor's "injury in fact" must be both real and immediate, not speculative, conjectural, or hypothetical. See Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 433-34 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987).

Analysis and Ruling

Having reviewed the Petition, it appears that the City has established standing to intervene because its substantial interests may be affected by this proceeding. Additionally, FPL concedes the City may intervene. Therefore, the Petition shall be granted. Regarding the issue of material fact raised by the City to which FPL objects, it should be noted that the City's intervention shall be limited to issues directly relevant to the tariffs that are the subject of this docket, and if necessary, a decision on the relevant issues will be made at a later date. Pursuant to Rule 25-22.039, F.A.C., the City takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Petition to Intervene filed by the City of South Daytona, Florida is hereby granted. 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:

Brian P. Armstrong, Esq.
David G. Tucker, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Telephone: (850) 224-4070
Facsimile: (850) 224-4073
E-Mail: barmstrong@ngnlaw.com
E-Mail: dtucker@ngnlaw.com

Scott E. Simpson, Esq.
Korey, Sweet, Mckinnon, Simpson and
Vukelja
Granada Oaks Professional Building
595 West Granada Blvd., Suite A
Ormond Beach, Florida 32174-9448
Telephone: (386) 677-3431
Facsimile: (386) 673-0748
E-Mail: simpson66@bellsouth.net

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 1st day of August, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

RRJ

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 25-22.060, 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.