

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 160186-EI

In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.

DOCKET NO. 160170-EI

ORDER NO. PSC-16-0568-PCO-EI
ISSUED: December 19, 2016

ORDER GRANTING INTERVENTION TO
FLORIDA INDUSTRIAL POWER USERS GROUP

Pursuant to Rule 25-6.140, Florida Administrative Code (F.A.C), on August 12, 2016, Gulf Power Company (Gulf) filed a test year letter notifying this Commission of its intent to file a petition between October 11 and October 28, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., Gulf filed its Minimum Filing Requirements and testimony on October 12, 2016. The hearing on the rates case is scheduled for March 20 through March 24, 2017.

Petition for Intervention

By petition dated December 7, 2016, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG states that it is an ad hoc association consisting of industrial users of electricity in Florida, some of whom are Gulf ratepayers. FIPUG asserts that the cost of electricity constitutes a significant portion of its members' overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. FIPUG also argues that the amount of the rate increase approved, if any, will affect its members' substantial interests by increasing their costs of electricity, which will in turn affect their production costs, competitive posture, and levels of employment. Therefore, FIPUG asserts that it has a substantial interest in having the Commission set rates for Gulf that are just and reasonable. No party has filed an objection to FIPUG's petition, and the time for doing so has expired.

Standards for Intervention

Rule 25-22.039, F.A.C., provides:

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. Intervenors take the case as they find it.

To have standing in an administrative proceeding, an 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) the 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); 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

It appears that the FIPUG meets the two-prong standing test in Agrico, as well as, the three-prong associational standing test established in Florida Home Builders. This proceeding is to determine the fair, just and reasonable electric rates to be charged by Gulf. FIPUG asserts that it is an association of Florida industrial electricity users, some of whom are Gulf ratepayers. FIPUG contends that these members’ substantial interests will be affected by this Commission’s decision to increase Gulf’s rates, since increases in the cost of electricity directly affect its members’ monthly electric bills. FIPUG further states that this is the type of proceeding designed to protect its members’ interests. Therefore, FIPUG’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, to have standing in an administrative proceeding, an association must demonstrate that a substantial number of its members are substantially affected by the proceeding. Florida Home Builders, 412 So. 2d at 353. Under Florida law, neither a specific number, nor percentage of association members, is required for standing. Hillsborough County v. Florida Restaurant Ass'n, Inc., 603 So. 2d 587, 589 (Fla. 2nd DCA 1992)(court found standing where 37 of 2,766 members were affected, because a substantial number of the members residing in the county at issue were affected). Here FIPUG asserts that it has members located in Gulf's service territory that receive electric service from Gulf, for which they are charged Gulf's applicable service rates. Accordingly, FIPUG states that its members will be substantially affected by this Commission's determination in this rate proceeding. Thus, I find that FIPUG meets the first prong of the associational standing test.

With respect to the second prong, the subject matter of the proceeding appears to be generally within the FIPUG's general scope of interest and activity. FIPUG is an association which represents its members' interests, and its members are industrial electricity users who purchase power from Gulf. Accordingly, FIPUG's members' interests will be directly affected by the rates this Commission approves for Gulf. Thus, I find that FIPUG meets the second prong of the associational standing test.

As for the third prong, FIPUG seeks intervention in order to represent the interests of its members in this proceeding before the Commission. A trade or professional association has standing to participate in an administrative proceeding, even though it is acting solely as the representative of its members. Florida Home Builders, 412 So. 2d at 353. As stated above, FIPUG members are industrial electricity users, some of whom are Gulf ratepayers, whose interests will be substantially affected by this Commission's determination in this proceeding. Thus, I find the relief requested by FIPUG is of a type appropriate for an association to obtain on behalf of its members.

Because FIPUG meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, FIPUG's petition for intervention shall be granted. Pursuant to Chapter 120, F.S., FIPUG may offer testimony and provide evidence as to whether the rates, rate-structure, and charges proposed by Gulf are fair, just and reasonable. Notwithstanding the granting of intervention, however, I remind the parties that issues shall be limited to those appropriate to the scope of an electric rate case proceeding. While issue development is an ongoing process, all issues and testimony should be germane to this rate case proceeding.¹ Disagreement as to the inclusion, scope or wording of particular issues will ultimately be resolved at the Prehearing Conference.

¹ Order Nos. PSC-15-0540-PCO-EI, issued November 20, 2016, and PSC-15-0546-PCO-EI, issued November 24, 2016, in Docket No. 150196-EI, In Re: Petition for determination of need for Okeechobee Clean Energy Center Unit 1, by Florida Power & Light Company; and Order No. PCS-14-0355-PCO-EI, issued July 11, 2014, In Re: Environmental cost recovery clause.

Pursuant to Rule 25-22.039, F.A.C., FIPUG takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Jimmy Patronis, as Prehearing Officer, that the Petition to Intervene filed by Florida Industrial Power Users Group is hereby granted as set forth in the body of this Order. It is further

ORDERED that the issues and testimony shall be limited to those appropriate in scope and germane to an electric rate case proceeding. 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 Jimmy Patronis, as Prehearing Officer, this 19th day of December, 2016.



JIMMY PATRONIS
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.