

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation  
into the requirement for  
individual electric metering by  
investor-owned electric  
utilities pursuant to Rule 25-  
6.049(5)(a), F.A.C.

DOCKET NO. 990188-EI  
ORDER NO. PSC-99-1474-PCO-EI  
ISSUED: July 29, 1999

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR  
INTERVENTION

By Petition filed June 22, 1999, Valencia Area Condominium Association, Inc. (Valencia) and Point Management, Inc. (Point) petitioned for leave to intervene in this proceeding. There has been no response filed in opposition to this request.

**I. RELIEF REQUESTED**

A. POINT

Point asserts that it is a management company for the Kings Point communities. Point contends that it is responsible for managing community property, including buildings for which construction was commenced prior to January 1, 1981. Point maintains that it manages condominium association property and is in the business of managing condominium buildings. Point asserts that it manages properties which receive electrical service metered and billed by Florida Power & Light Company (FPL) and other investor-owned utilities. Point asserts that any Commission decision affecting the manner in which electric service is metered and billed under Rule 25-6.049(5)(a), Florida Statutes, will affect its substantial interests because the properties Point manages receive electric service from investor-owned utilities.

B. VALENCIA

Valencia asserts that it is an association formed to represent the owners of units in the condominium buildings known as Valencia A through I. Valencia maintains that it represents the interests of the owners of these buildings who have electric service metered and billed by FPL. Valencia contends that it and its members' substantial interests will be affected by any Commission decision in this docket. Valencia asserts that it and its members will be directly affected by any Commission decision affecting the manner in which the units owned by Valencia's members will be metered and billed for electric usage.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

## II. STANDING AS APPLIED TO POINT MANAGEMENT, INC.

Following Florida standing law as it was expressed in Agrico Chem. Co. v. Dept. of Env't'l. Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied 415 So. 2d 1359 (Fla. 1982), petitioners to intervene in a docket must have standing. In order to have standing, petitioners must have a substantial interest in the outcome of the proceeding. To have a substantial interest in the outcome of the proceeding, the petitioner must show that it is entitled to participate as a matter of constitutional or statutory right or pursuant to Commission rule, or that its substantial interests are subject to determination or will be affected through the proceeding. Point has not alleged that it is entitled to intervene as a matter of right or pursuant to Commission rule. It is appropriate, therefore, to apply the two-pronged test for "substantial interest" set forth in Agrico. According to the Agrico test, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. at 482.

With respect to the first prong of the test, Point's petition only contains allegations that it "manages condominium association property and is in the business of managing condominium buildings." (Petition at 2) Point further alleges that it "manages properties that receive electric service that is metered and billed by, among others, Florida Power & Light." (Petition at 2). Point alleges no nexus between its management activities and the receipt of bills for electricity usage by owners of the properties it manages.

After consideration, I find that Point has not shown that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Point has merely alleged that it manages property that receives electricity from various companies.

With respect to the second prong of the Agrico test, I find that the Point's arguments contained in the petition allege no injury designed to be protected by proceedings to investigate the requirement for individual electric metering by investor-owned electric utilities pursuant to Rule 25-6.049(5)(a), Florida Administrative Code.

Based on the foregoing, Point Management, Inc.'s, portion of the Petition to Intervene in these proceedings is denied.

**II. STANDARD FOR ASSOCIATION STANDING AS APPLIED TO VALENCIA AREA  
CONDOMINIUM ASSOCIATION, INC.**

Florida Homebuilders Ass'n. v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), held that an association's standing to bring a rule challenge under Section 120.56(1), Florida Statutes, requires the showing that the association and its members were "substantially affected" by the challenged rule. This test for association standing was extended in Farmworker Rights Org. v. Dept. of Health, 417 So. 2d 753 (Fla. 1st DCA 1982). The Farmworker case established that there is no difference between participating in a rule challenge and participating in a Section 120.57, Florida Statutes, hearing for the purposes of determining standing.

Subsequently, the First District Court of Appeal recognized that, in the context of standing, there can be a difference between the concepts of "substantially affected" persons and persons whose "substantial interests" are affected by an agency's action. The court suggested that Farmworker is not applicable to every case in which an association seeks to participate in a Section 120.57 proceeding. Florida Soc. of Ophthalmology supra. Florida Soc. of Ophthalmology appears aimed at the first prong of the Florida Homebuilders Ass'n. test which provides that an association must demonstrate that a substantial number of its members are substantially affected by the agency's action. The Court does not address the applicability of the second and third prongs of Florida Homebuilders, relating to the requirement that the subject matter of the proceeding be within the association's general scope of interest and activity; and, that the relief requested is of the type appropriate for an association to receive on behalf of its members.

Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology, when read together, suggest that the appropriate test for association standing in this case is whether Valencia's petition, has demonstrated: (1) that a substantial number of its members have substantial interests which are affected by the present action; (2) that the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) that the relief requested is of the type appropriate for an association to receive on behalf of its members.

A. THE FIRST PRONG OF THE ASSOCIATIONAL STANDING TEST

When Valencia's petition is read under Agrico, the Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology cases, it appears to meet the tests outlined in Agrico, Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology. Under the first prong of the Florida Homebuilders Ass'n. test, associations must meet the Agrico test outlined above. Valencia has demonstrated in its petition that it and its members will suffer injury in fact which is of sufficient immediacy to entitle them to a section 120.57 hearing. Valencia's members receive electric service from FPL. Valencia asserts that, "the vast majority" of its members are elderly and live on fixed incomes. Any change in the manner of metering and billing Valencia's members for electricity would be disruptive, and very likely could cause them confusion and added expense. Valencia has also shown that its members have no other forum to exercise their rights than the present one. The substantial injury accruing to Valencia's members is of a type or nature which this proceeding is designed to protect. We believe Valencia has demonstrated that its members, who are customers of FPL and whose situation would subject them to any change in the manner in which their electricity is metered and billed, will be affected by our decision in this docket to a degree and in a nature which passes the rigors of the Agrico test.

B. THE SECOND PRONG OF THE ASSOCIATIONAL STANDING TEST

We believe that Valencia has shown: (1) "a zone of interest personal to [its members] that would be invaded" by this proceeding under Section 366.05, Florida Statutes, and Rule 25-6.049(5)(a), Florida Administrative Code. We believe that this would rise to the substantial interest test. Valencia Area Condominium Association, Inc.'s members stand to have changed the manner in which their electricity is metered and billed to them.

This generic investigation into the requirement for individual electric metering under Section 366.05, Florida Statutes, and Rule 25-6.049(5)(a), Florida Administrative Code, is within the association's general scope of interest and activity. The Association asserts that it exists only to represent the interests of the owners of the condominium units. The owners of these units take electric service from an investor-owned electric utility and are thereby the very population any change in the requirement for individual metering would target. Valencia, as these owners' voice, has as its general duty to see that the interests of its

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members are adequately represented wherever they are to be determined.

C. THE THIRD PRONG OF THE ASSOCIATIONAL STANDING TEST

The third prong of the Florida Homebuilders Ass'n. and Florida Soc. of Ophthalmology test for association standing, determining that the relief requested is of the type appropriate for an association to receive on behalf of its members, has also been met here. Valencia merely requests to participate as an intervenor in this docket to express the concerns of its members over an issue that impacts them directly as the group targeted by any change in the manner in which electricity is metered and billed for their units in their condominium buildings. We believe that this type of relief is appropriate for Valencia to receive on behalf of its members.

Based on the foregoing, Valencia's portion of the Petition for Leave to Intervene is granted.

It is therefore

ORDERED by the Florida Public Service Commission that the portion of the Petition for Leave to Intervene filed by Valencia Area Condominium Association, Inc., is granted and the portion of the Petition for Leave to Intervene filed by Point Management, Inc., is denied. 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:

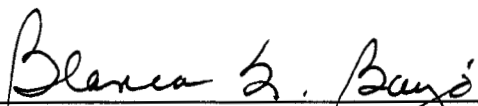
Valencia Area Condominium Association, Inc.  
7000 West Atlantic Avenue  
Delray Beach, Florida 33446

and

Mr. Jon C. Moyle, Esquire  
Moyle, Flanigan, Katz, Kolins, Raymond & Sheehan, P.A.  
210 South Monroe Street  
Tallahassee, Florida 32301

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By ORDER of the Florida Public Service Commission this 29th  
day of July, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

GAJ

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.

FLORIDA PUBLIC SERVICE COMMISSION - RECORDS AND REPORTING

Requisition for Photocopying and Mailing

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 Number of Originals 6 Copies Per Original 19  
 Requested By [Signature]

Item Presented  
 Agenda For (Date) \_\_\_\_\_ Order No. 99-1474 In Docket No. 990188  
 Notice of \_\_\_\_\_ For (Date) \_\_\_\_\_ In Docket No. \_\_\_\_\_  
 Other \_\_\_\_\_

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Number	Distributed/Mailed To	Number	Distribution/Mailed To
<u>19</u>	<u>Commission Offices</u>	<u>--</u>	_____
<u>2</u>	<u>Docket Mailing List - Mailed</u>	_____	_____
<u>6</u>	<u>Docket Mailing List - Faxed</u>	_____	_____

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Job Number 20 Verified By Michael  
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Date Mailed / Verified By /

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99 JUL 28 PM 3:27

JULY 28, 1999

RECORDS AND  
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JAY) *[Signature]* *[Initials]*

RE: DOCKET NO. 990188-EI - IN RE: GENERIC INVESTIGATION INTO  
THE REQUIREMENT FOR INDIVIDUAL ELECTRIC METERING BY  
INVESTOR-OWNED ELECTRIC UTILITIES PURSUANT TO RULE 25-  
6.049(5)(a), FLORIDA ADMINISTRATIVE CODE

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*99-1474-PCO*

Attached is an ORDER GRANTING IN PART AND DENYING IN PART  
PETITION FOR INTERVENTION to be issued in the above-referenced  
docket. (Number of pages - *76*)

GAJ/js  
Attachment  
cc: Division of Electric and Gas (Wheeler, Goad)  
I:\990188in.gaj

*See 1*

*Perked 6/2  
mented*