

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-01-1675-PCO-EI  
ISSUED: August 16, 2001

ORDER GRANTING PETITION TO INTERVENE

This docket was opened on August 15, 2000, to review Florida Power & Light Company's (FPL or the company) proposed merger with Entergy Corporation (Entergy), the formation of a regional transmission organization (RTO), and their effects on FPL's rates and earnings. On April 2, 2001, FPL Group, Inc. announced that the agreement to merge with Entergy had been terminated.

At the May 15, 2001, Agenda Conference, the Commission voted to require FPC and FPL to file Minimum Filing Requirements (MFRs), based on a 2002 test year, to address potential over earnings and the effect of the formation of and participation in the GridFlorida RTO. See Order No. PSC-01-1346-PCO-EI issued on June 19, 2001. A 2002 test year overlaps with the first year of planned operation of GridFlorida. The same data and subsequent discovery are required to address both over earnings and the impact of GridFlorida on the retail rates of FPL.

On May 15, 2001, Thomas P. Twomey and Genevieve Twomey filed a Petition to Intervene in this docket. FPL's Response was filed on May 22, 2001.

The Twomeys state that they are residential customers of FPL and that the cost of electricity represents one of the larger variable costs of their household budget. They claim that they will be substantially affected by any action the Commission takes in this docket, and that such action will include a decision to increase, decrease or leave unchanged FPL's rates.

The Twomey's assert that the material issues of fact include the following: 1) the effect of the failed merger on FPL's earnings and costs; 2) the effect of the failed merger on FPL's market

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power; 3) the necessity, reasonableness and prudence of GridFlorida and the proposed costs for retail customers; and 4) the reasonableness of FPL's achieved return on equity. The Twomey's assert that the ultimate facts include the appropriate level of retail rates to be charged by FPL.

FPL contends that this proceeding is an investigation, not a proceeding to determine a party's substantial interests. FPL further contends that the investigation conducted in this docket could not lead to an "injury in fact", which is a requirement for standing. See Agrico Chemical Co. v. Dep't of Env. Reg., 406 So. 2d 478, 481 (Fla. 1<sup>st</sup> DCA 1981).

FPL argues that the disputed issues of fact asserted by the Twomeys concerning the merger are not currently and never were a subject of the investigation in this docket. FPL contends that initially the docket was opened to investigate the effects of its proposed merger with Entergy, and that abandonment of the merger did not create an investigation into the effects of not merging. FPL argues that the merger is no longer an issue and the Twomey's should not be granted intervention so that they can explore the effects of not merging. FPL claims that if their Petition is granted, the intervention be limited to issues that currently under investigation.

With respect to the disputed issues of fact pertaining to return on equity and retail rates, FPL argues that these issues "seem to anticipate expansion of this docket to a full-fledged rate investigation." FPL argues that such expansion of the docket has not occurred and no intervenor should be allowed to determine the scope of the proceeding through their identification of issues.

#### Legal Standard

To have standing in an administrative proceeding, a party must show that its substantial interests will be determined in the proceeding. See § 120.569(1), Florida Statutes. To have a substantial interest determined in a proceeding, a party must show: 1) it will suffer actual and immediate injury; and 2) that the injury falls within the zone of interest of statute being applied in the proceeding. See Agrico at 482.

In this proceeding, the applicable statutes are: 1) Sections 366.04(5) and (6), Florida Statutes, collectively known as the Grid Bill; and 2) Sections 366.05 and 366.06, Florida Statutes, from which the Commission derives its ratemaking authority.

The Grid Bill give the Commission jurisdiction over certain aspects of transmission. Section 366.04(5) states:

The Commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

In addition, the Commission has authority to set and enforce safety standards for transmission facilities of electric utilities. See Section 366.04(6), Florida Statutes.

Sections 366.05 and 366.06, Florida Statutes, give the Commission the authority to set rates for public utilities. Section 366.06(2) provides:

Whenever the commission finds, upon request made or upon its own motion, the rates demanded, charged or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; that such rates yield excessive compensation for the services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing ... and shall thereafter determine just and reasonable rates...

### Analysis

This proceeding is being conducted in two phases. In Phase I, the Commission will determine the prudence of FPL's participation

in GridFlorida. Phase II will be a rate case. The issues for Phase I were established in Order No. PSC-01-1485-PCO-EI, issued on July 16, 2001. The Order states that the issues for Phase I are being examined in the context of rate proceedings.

FPL correctly maintains that the effect of the terminated merger is not a disputed fact in this docket and is not a basis for intervention. As of May 15, 2001, when the Commission required the submittal of MFRs, this proceeding became an investigation into rates. FPL's assertion to the contrary is incorrect.

The Twomeys correctly claim that the Commission action taken in this docket will include a decision to raise, lower or leave unchanged FPL's retail rates. Because the Twomeys are retail customers of FPL, and because the cost of electricity is one of the larger variable costs of their household, they satisfy the injury requirement in Agrico.

The Twomeys' alleged injury falls within the zone of interest of the statutes conferring ratemaking authority on the Commission. Section 366.06(2), Florida Statutes, allows the Commission to determine whether rates are fair to the customer and the utility. The statute gives the Commission authority to adjust the rates if it finds that they are not fair to the customer or the utility. It is the adjustment of rates creates the alleged injury.

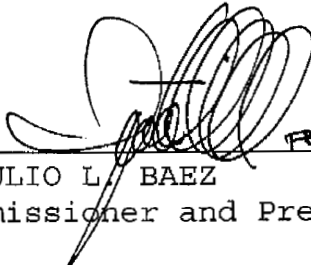
For the reasons stated above, the Twomey's Petition to Intervene is granted.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Twomeys' Petition to Intervene is granted.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 16th day of August, 2001.

  
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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

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reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.