

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of investor-owned electric utilities' risk management policies and procedures.

DOCKET NO. 011605-EI
ORDER NO. PSC-02-0357-PCO-EI
ISSUED: March 15, 2002

ORDER GRANTING INTERVENTION

By petition filed February 15, 2002, Reliant Energy Power Generation, Inc. ("Reliant") has requested permission to intervene in this docket. On March 8, 2002, Florida Power & Light Company ("FPL") filed a response in opposition to Reliant's petition.

In its petition, Reliant states that it is a developer of independent power projects in Florida and a provider of wholesale energy to retail-serving utilities. Reliant further states that it has made a significant capital investment to establish a presence in Florida's wholesale energy market and, thus, has a substantial interest in decisions and policies that affect the depth and viability of that market. Reliant argues that to the extent a decision would have implications for the amount of purchased power deemed desirable for the investor-owned utilities whose risk management practices are being reviewed in this docket, Reliant's substantial interests would be affected by a decision that assesses or purports to characterize the advantages and risks associated with purchases of wholesale power.

Reliant also states that it is a retail customer of Florida Power Corporation ("FPC"), taking service under FPC's standby service rate. Reliant argues that as a retail customer of electricity provided by an investor-owned utility regulated by this Commission, Reliant's substantial interests will be affected by a decision that governs the manner in which FPC manages risks borne by Reliant and other retail ratepayers.

Reliant asserts that the purpose of ascertaining whether the investor-owned utilities' risk management practices are reasonable and appropriate is to protect the retail ratepayers. Reliant contends that, as a retail customer, Reliant's costs of service will be greater than they should be if FPC fails to take advantage of opportunities to shift risk away from ratepayers. Reliant also

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contends that, as a wholesale provider, Reliant's interests would be adversely affected by a policy that understates, for purposes of retail-serving utilities' purchasing practices, the obligation of the retail-serving utilities to avail themselves of the ability of wholesale providers to lower risks to ratepayers.

In its response, FPL asserts that it does not object to Reliant's intervention in this docket to the extent that Reliant seeks to protect its interests as a retail customer of FPC. However, FPL states, Reliant's petition indicates that Reliant intends to intervene to represent its interests as a wholesale provider rather than a retail customer. In support, FPL points to paragraph 8 of Reliant's petition, where Reliant states that "unless the perspective of wholesale providers is represented in this proceeding, the Commission will not receive a full picture of the important considerations that bear on the issues." FPL contends that the majority of Reliant's petition is an advocate's brief on the merits of requiring the investor-owned utilities to rely more heavily on purchased power from wholesale providers.

FPL argues that to the extent Reliant is attempting to intervene in this docket to protect its interests as a wholesale provider, Reliant lacks standing to do so under the generally applicable test for standing to participate in administrative proceedings as set forth in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981). FPL asserts that Reliant's interest as a wholesale provider does not satisfy that portion of the Agrico test which requires that the injury asserted by the petitioner be of a type or nature which the proceeding is designed to protect. FPL contends that this proceeding is intended to protect the interests of retail ratepayers, not wholesale providers, and that Reliant should not be permitted to use its status as a retail customer to improperly pursue its interests as a wholesale provider.

As a procedural matter, it appears that FPL's response in opposition was untimely filed. Although Rule 25-22.039, Florida Administrative Code, employs the term "petition" as the pleading which is to be filed to request intervention, the Commission has previously interpreted such a pleading as a motion for purposes of determining whether a response is timely. See Order No. PSC-97-0470-FOF-WU, issued April 23, 1997, in Docket No. 960867-WU; and

Order No. PSC-98-1089-PCO-WS, issued August 11, 1998, in Docket No. 970657-WS. Rule 28-106.204(1), Florida Administrative Code, provides that "[w]hen time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition." Because service was made to FPL by U.S. mail, FPL was permitted five additional days to respond, pursuant to Rule 28-106.103, Florida Administrative Code. Thus, FPL's response was due to be filed no later than February 27, 2002, twelve days from the date the petition was mailed. Instead, FPL's response was filed March 8, 2002. Accordingly, I find that FPL's response is untimely. However, because Rule 25-22.039, Florida Administrative Code, employs the term "petition", FPL in good faith may have believed it had twenty days in which to file a response. In light of this fact, I find that considering FPL's response is appropriate and will not prejudice Reliant.

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. Agrico at 482. Upon consideration of the pleadings in light of this standard, it appears that Reliant's substantial interests as a retail customer of FPC may be affected by this proceeding, but that Reliant's interest as a wholesale provider is not one that this proceeding was designed to protect. Therefore, Reliant's petition to intervene is granted so that Reliant may represent its interests as a retail customer in this proceeding. As a retail customer, Reliant is not precluded from presenting evidence regarding benefits it may receive as a result of utility power purchases from wholesale providers, so long as the evidence is relevant to the issues established in this docket and not otherwise objectionable. However, the grant of intervenor status to Reliant shall not be construed to permit Reliant's interests as a wholesale provider to be represented in this proceeding. Pursuant to Rule 25-22.039, Florida Administrative Code, Reliant takes the case as it finds it.

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Therefore, it is


ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that Reliant Energy Power Generation, Inc.'s Petition to Intervene in this docket is granted as set forth in the body of this Order. 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 the following:

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By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 15th Day of March, 2002.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

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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 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.