

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI
ORDER NO. PSC-08-0297-PCO-EI
ISSUED: May 7, 2008

ORDER GRANTING INTERVENTION

On February 29, 2008, and March 3, 2008, respectively, Progress Energy Florida, Inc. (PEF) and Florida Power & Light Company (FPL) each filed petitions to seek a prudence review of and to recover certain costs associated with construction of their uprates of existing nuclear plants pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.) The petitions were filed in this Nuclear Cost Recovery Clause (NCRC) docket. This is the first year of this newly established roll-over docket.

Petition for Intervention

By petition dated March 24, 2008, 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 within FPL and PEF's service territories. FIPUG states that its participants require an adequate, reasonably priced, and reliable supply of electricity to compete in their respective markets. According to FIPUG, the Commission will decide in this proceeding whether to approve the nuclear cost recovery petitions of FPL and PEF, for certain site preparation and pre-construction costs for their respective nuclear power plants and nuclear power plant uprates. FIPUG contends that its interests are of the type this proceeding is designed to protect. No party has filed an objection to FIPUG's Petition, and the time for doing so has expired.

Standards 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 be filed at least five (5) days before the final hearing, 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 through the proceeding. Intervenors take the case as they find it.

To have standing, the 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 (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the

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test deals with the degree of injury. The second deals with 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). See also, 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).

Further, 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 FIPUG meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. FIPUG asserts that it is an ad hoc association consisting of industrial users of electricity in FPL and PEF's territories and that the cost of electricity constitutes a significant portion of these customers' overall costs of production. 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, FIPUG asserts that its members are retail electric customers of FPL and PEF and that its members' substantial interests will be directly affected by the Commission's decision to include certain site preparation and pre-construction costs in the NCRC. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FIPUG's general scope of interest and activity. FIPUG is an ad hoc association whose members are industrial consumers of electricity. FIPUG contends that its members will be directly affected by the proposed rates. Furthermore, FIPUG has been granted party status in similar proceedings, such as the Commission's annual fuel clause proceedings.¹ As for the third prong of the associational standing test, FIPUG is seeking intervention in this docket to represent the interests of its members in reviewing the prudence of the proposed costs to be included in the capacity clause. Because those costs affect the electric rates that its members must pay, FIPUG appears to be in a position to request the Commission to grant relief on behalf of its members. Granting intervention to FIPUG in the NCRC is consistent with prior Commission decisions recognizing the continuing party status of FIPUG in fuel cost recovery clause proceedings.

¹ See, Docket Nos. 080001-EI, 070001-EI, 060001-EI, 050001-EI, 040001-EI, In re: Fuel and purchased power cost recovery clause and generating performance incentive factor, in which FIPUG participated as an intervenor on issues regarding electric rates its ad hoc members would pay for the succeeding years.

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


Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, 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 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:

Florida Industrial Power Users Group
c/o McWhirter & Davidson, P.A.
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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 7th
day of May, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(S E A L)

LCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., 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.