

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 090009-EI
ORDER NO. PSC-09-0431-PCO-EI
ISSUED: June 19, 2009

ORDER GRANTING INTERVENTION

On March 2, 2009, Progress Energy Florida, Inc. (PEF) filed a petition to seek a prudence review of and to recover certain costs associated with construction of the Crystal River Unit 3 Uprate and the Levy Units 1 and 2 nuclear power plants, pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.). On March 2, 2009, Florida Power & Light Company (FPL) also filed a petition to seek a prudence review of and to recover certain costs associated with nuclear power plant costs. PEF and FPL filed their petitions in the Nuclear Cost Recovery Clause (NCRC) docket. By petition dated April 27, 2009, the Southern Alliance for Clean Energy (SACE) filed a Petition to Intervene (Petition) in this docket. On May 4, 2009, FPL filed a Response to SACE's Petition. No other objections have been filed regarding SACE's Petition, and the time for doing so has expired.

SACE's Petition

According to SACE, it is a non-profit organization that promotes responsible energy choices that solve global warming problems and ensures clean, safe and healthy communities throughout the Southeast, including in the State of Florida. According to SACE, it has 1,781 members in Florida who are PEF and FPL ratepayers dispersed throughout PEF and FPL's service territories. In its petition, SACE states that as consumers of electricity in the PEF and FPL service areas, SACE members' substantial interests will be affected by the Commission's decision whether to approve the companies' cost recovery requests, because approval of these requests will substantially and directly increase the rates charged to its members.

FPL's Response

In its response, FPL states that it does not object to SACE's participation as a party; however, FPL requests that SACE's participation as an intervenor be limited to addressing those issues which are properly within the scope of the cost recovery proceeding. FPL does not agree or support the statements made by SACE in its Petition raising issues concerning the promotion of "energy sources that solve global warming problems and ensure clean, safe and healthy communities" and the thorough evaluation of "all cost-effective energy efficiency measures as a means of mitigating or displacing the need for new, non-renewable electricity generation." FPL argues that consideration of such matters is not within the scope of this proceeding or Rule 25-6.0423, F.A.C.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Standards of 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, conform with Rule 28-106.201(2), F.A.C., and 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 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) this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the 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 SACE meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. With respect to Agrico, it appears that SACE’s interests are of sufficient immediacy to entitle it to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, SACE, on behalf of its affected Florida members, asserts that as retail electric customers of PEF and FPL, their substantial interests will be directly affected by the Commission’s decision whether to approve the cost recovery requests, because Commission approval will impact the rates PEF and FPL will charge SACE’s members. With respect to the second prong of the associational standing test, the subject matter of the proceeding is within SACE’s general scope of interest and activity. SACE contends that as an

advocate for its members' interests, it is uniquely poised to assess the risks to PEF and FPL ratepayers associated with the Commission's decision in this case, particularly with respect to the volatility of capital costs of electric generation facilities and the risks resulting from regulatory decisions based on incorrect and/or inadequate assumptions and factual information related to the construction and operating costs of new nuclear power plants with their new design specifications. As for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent the interests of its members. Based on the foregoing analysis, SACE's standing in this docket has been established.

Because SACE meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders, SACE's petition for intervention shall be granted as set forth herein. Issue development is an ongoing process. All issues should be germane to this proceeding, and disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference. Pursuant to Rule 25-22.039, F.A.C., the intervenor takes the case as it finds it.

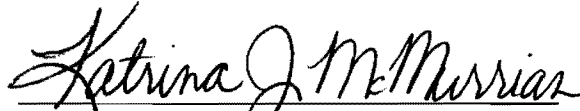
Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Petition to Intervene is granted with respect to the Southern Alliance for Clean Energy as set forth herein. 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 docket, to:

E. Leon Jacobs, Jr.
Williams & Jacobs, LLC
1720 S. Gadsden St. MS 14, Suite 201
Tallahassee, Florida 32301
(850) 222-1246
(850) 599-9079 fax
Ljacobs50@comcast.net

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 19th day of June, 2009.


KATRINA J. McMURRIAN
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; 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.