

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-09-0500-PCO-EG ISSUED: July 15, 2009

ORDER GRANTING INTERVENTION

Section 366.82, Florida Statutes (F.S.), part of the Florida Energy Efficiency and Conservation Act (FEECA), requires the Commission to adopt goals to increase the efficiency of energy consumption, increase the development of demand-side renewable energy systems, reduce and control the growth rates of electric consumption and weather-sensitive peak demand, and encourage development of demand-side renewable energy resources. Pursuant to Section 366.82(6), F.S., the Commission must review a utility's conservation goals not less than every five years. These statutes are implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code (F.A.C.). By Order No. PSC-08-0816-PCO-EG, issued December 18, 2008, Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG were consolidated for purposes of hearing and controlling dates were established. The utilities, which are the subject of these seven dockets, are hereinafter "FEECA Utilities." By Order No. PSC-09-0152-PCO-EG, issued March 12, 2009, the controlling dates

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were revised, and the matter was scheduled for a formal administrative hearing on August 10-14, 2009.

Petition for Intervention

By petition dated June 15, 2009, the Florida Industrial Power Users Group (FIPUG) filed a Petition to Intervene (Petition) in this proceeding. According to its Petition, FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. FIPUG further states that the cost of electricity constitutes a significant portion of its members' overall costs of production. FIPUG asserts that its members require adequate, reasonably-priced electricity in order to compete in their respective markets.

FIPUG states that in this proceeding, the Commission will set numeric goals for the FEECA Utilities for conservation and energy efficiency measures. The costs of such programs will be recovered by investor-owned utilities through the Conservation Cost Recovery Clause (CCRC). FIPUG asserts that its member companies pay costs of programs associated with the CCRC. As such, FIPUG contends that the substantial interests of its members will be directly affected by the Commission's decisions in this proceeding due to the impact on electric rates. No party has filed an objection to FIPUG's Petition, and the time for doing so has expired.

Standard 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 days before the evidentiary 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 by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must satisfy 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, F.S., 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 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 satisfies the two-prong standing test in Agrico, 406 So. 2d at 482, as well as the three-prong associational standing test established in Florida Home Builders, 412 So. 2d 351. With respect to Agrico, 406 So. 2d at 482, it appears that FIPUG's members may suffer injury in fact of sufficient immediacy which entitles its members to participate in this proceeding, and this type of proceeding is designed to protect those members' interests.

With respect to the first prong of the Florida Home Builders, 412 So. 2d 351, associational standing test, FIPUG asserts that is an ad hoc association consisting of industrial users of electricity in Florida and that its members' substantial interests will be directly affected by the Commission's decisions on the appropriate conservation goals and programs. 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 contends that its members will be directly affected by the Commission's decisions in this proceeding due to the impact on electric rates. As for the third prong of the associational standing test, FIPUG is seeking intervention in this docket in order to represent the interests of its members in this proceeding. Based on the foregoing analysis, FIPUG's standing in this proceeding has been established.

Conclusion

Because FIPUG satisfies the two-prong standing test in Agrico, 406 So. 2d at 482, as well as the three-prong associational standing test established in Florida Home Builders, 412 So. 2d 351, FIPUG's petition for intervention shall be granted. Issue development is an ongoing process; while issues should be germane to this proceeding, 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., FIPUG takes the case as it finds it.

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Based on the foregoing, it is


ORDERED by Chairman Matthew M. Carter II, as Prehearing Officer, that the Petition to Intervene filed by the Florida Industrial Power Users Group is hereby granted 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 proceeding to:

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By ORDER of Chairman Matthew M. Carter II, as Prehearing Officer, this 15th day of
July, 2009.



MATTHEW M. CARTER II
Chairman and Prehearing Officer

(S E A L)

KEF/sw

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 25-22.0376, 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.