

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress
Energy Florida, Inc.

DOCKET NO. 090079-EI
ORDER NO. PSC-09-0579-PCO-EI
ISSUED: August 27, 2009

ORDER GRANTING INTERVENTION

On February 12, 2009, Progress Energy Florida, Inc. (PEF) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2009 for a general rate increase effective January 1, 2010. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., PEF filed a petition for an increase in rates on March 20, 2009.

Petition for Intervention

By petition dated August 10, 2009, the Florida Association For Fairness In Rate Making (AFFIRM) filed a petition to Intervene (Petition) in this docket. According to its Petition, AFFIRM states that it is a coalition of quick-serve restaurants that have substantially similar electrical usage characteristics. AFFIRM asserts that its members are corporations and corporations' franchisees that own and operate over 500 business locations served by PEF under the following brand names: Waffle House, Wendy's, Arby's, and YUM! Brands, doing business as Pizza Hut, Kentucky Fried Chicken, Taco Bell, Long John Silver's, and A&W. AFFIRM contends that these members are commercial electric customers of PEF and purchase electricity from PEF pursuant to several different PEF rate schedules. AFFIRM asserts that its members require adequate, reasonably priced electricity in order to conduct their businesses consistently with the needs of their customers and ownership. No party has filed an objection to AFFIRM'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, 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

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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 AFFIRM meets 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. AFFIRM asserts that all or most of its members are retail customers of PEF whose substantial interests will be affected by this Commission’s decision whether to increase PEF’s rates. AFFIRM further states that this is the type of proceeding designed to protect its members’ interests. Therefore, AFFIRM’s members meet the two-prong standing test of Agrico, 406 So. 2d at 482.

With respect to the first prong of the associational standing test, AFFIRM states that all or most of its members will be substantially affected by the Commission’s decisions. As to the second prong of the associational standing test, AFFIRM alleges that it was formed for the purpose of protecting its members’ interests in rate proceedings; thus, the subject matter of this proceeding is within AFFIRM’s general scope of interest and activity. As to the third prong of the associational standing test, AFFIRM asserts that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Because AFFIRM meets the two-prong standing test established 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, AFFIRM’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., AFFIRM takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by the Florida Association For Fairness In Rate Making 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:

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 27th day of August, 2009.



NATHAN A. SKOP
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; 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.