

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Special Gas Transportation Service agreement with Florida City Gas by Miami-Dade County through Miami-Dade Water and Sewer Department.	DOCKET NO. 090539-GU ORDER NO. PSC-10-0261-PCO-GU ISSUED: April 26, 2010
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ORDER GRANTING PETITION TO INTERVENE

On December 14, 2009, Miami-Dade Water and Sewer Department (MDWSD) filed a Petition for Approval of Special Gas Transportation Service Agreement (2008 Agreement) with Florida City Gas (FCG). In its petition, MDWSD requested that the Commission find that it lacks jurisdiction over the 2008 Agreement executed by MDWSD and FCG. Alternatively, MDWSD requested that if the Commission does have jurisdiction that it approve the 2008 Agreement and order FCG to refund to MDWSD the difference between the 2008 Agreement rates and the current tariff rates now being charged to MDWSD by FCG. FCG filed an answer to MDWSD's petition on December 29, 2009.

Petition for Intervention

By petition dated March 5, 2010, FCG requested permission to intervene in this proceeding. FCG states that it is a public utility regulated by this Commission as a supplier of natural gas and as a provider of natural gas transmission. FCG states that enforcement of the 2008 Agreement rates, and the request for a refund of any difference between the 2008 Agreement rates and the tariff rates collected by FCG, or now being held in escrow by MDWSD, would adversely impact FCG's general body of ratepayers and FCG's operations. Furthermore, FCG states that the determination of the jurisdictional question raised by MDWSD will substantially and directly affect FCG's substantial interests and those of FCG's general body of ratepayers. Finally, FCG notes that MDWSD specifically identified FCG in its Petition as a party to the proceeding, and that FCG is the party against whom MDWSD seeks to enforce the 2008 Agreement. No party has filed an objection to FCG's Petition, and the time for doing so has expired.

Standards for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code (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.

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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).

Analysis and Ruling

It appears that FCG meets the two-prong standing test in Agrico. FCG argues that the Commission’s decision in this case will affect its substantial interests and that it faces immediate injury if the Commission enforces the 2008 Agreement rates. FCG further asserts that this is the type of proceeding designed to protect its interests. Therefore, FCG meets the two-prong standing test established in Agrico. Accordingly, FCG’s petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FCG takes the case as it finds it.

Based on the foregoing, it is

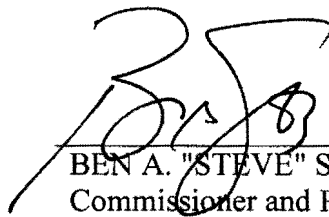
ORDERED by Commissioner Ben A. “Steve” Stevens III, as Prehearing Officer, that the Petition to Intervene filed by Florida City Gas is hereby granted as set forth in the body of this Order. It is further

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:

Floyd R. Self, Esq.
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
850-425-5203 (telephone)
850-558-0656 (facsimile)
fself@lawfla.com

Shannon O. Pierce, Esq.
AGL Resources Inc.
Ten Peachtree Place, 15th Floor
Atlanta, GA 30309
404-584-3394 (telephone)
spierce@aglresources.com

26 By ORDER of Commissioner Ben A. "Steve" Stevens III, as Prehearing Officer, this
day of April, 2010.


BEN A. "STEVE" STEVENS III
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 25-22.0376, 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.