

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to implement a demonstration project consisting of proposed time-of-use and interruptible rate schedules and corresponding fuel rates in the Northwest Division on an experimental basis and request for expedited treatment, by Florida Public Utilities Company.

DOCKET NO. 100459-EI  
ORDER NO. PSC-11-0129-PCO-EI  
ISSUED: February 25, 2011

ORDER GRANTING INTERVENTION

On December 14, 2010, Florida Public Utilities Company (FPUC) filed a petition for authority to implement a demonstration project of proposed time-of-use (TOU) and interruptible rate (IR) schedules on an experimental basis and requested expedited treatment. The Commission approved FPUC's petition as set forth by Order No. PSC-11-0112-TRF-EI, issued February 11, 2011, in this docket.

Petition for Intervention

By petition, dated January 7, 2011, the City of Marianna, Florida (Marianna or City) has requested permission to intervene in this proceeding. The City states it is a political subdivision of the State of Florida, it is a customer of FPUC, and is also a party to the Franchise Agreement which requires FPUC to implement TOU/IR rates. The City asserts that its substantial interests will be affected and determined by the Commission's actions in this docket and this proceeding is designed to protect the rights of FPUC's customers. Further, the City asserts that as a customer of FPUC, it is eligible to take service under proposed TOU/IR rate schedules. Thus, the City requests permission to intervene. There has been no response filed in opposition to this request, 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.

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In order to establish standing, the intervenor must satisfy the two-prong standing test in Agrico Chem. Co. v. Dep't of Envtl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) his substantial injury is of a type or nature which the proceeding is designed to protect. See id. The first aspect of the test deals with the degree of injury; the second deals with the nature of the injury. See id. The intervenor's "injury in fact" must be both real and immediate, not speculative, conjectural, or hypothetical. See Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 433-34 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987).

### Analysis & Ruling

Having reviewed the Petition, it appears that the City's substantial interests may be affected by this proceeding. There has been no response filed in opposition to this request. Therefore, the Petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., Marianna takes the case as it finds it.

Therefore, it is

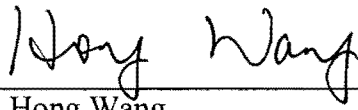
ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by the City of Marianna is hereby granted. It is further

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:

Robert Scheffel Wright, Attorney at Law  
John T. La Via, III, Attorney at Law  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

By ORDER of the Florida Public Service Commission this 25th day of February, 2011.

ANN COLE  
Commission Clerk

By:   
\_\_\_\_\_  
Hong Wang  
Chief Deputy Commission Clerk

( 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.