

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to approve revised and restated stipulation and settlement agreement by Duke Energy Florida, Inc. d/b/a Duke Energy.

DOCKET NO. 130208-EI
ORDER NO. PSC-13-0401-PCO-EI
ISSUED: August 30, 2013

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

On August 1, 2013, Duke Energy Florida, Inc. (DEF) filed a Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement. DEF requested that the Commission hold a limited proceeding pursuant to Sections 366.076 and 120.57(2), Florida Statutes (F.S.), and Rule 28-106.301, Florida Administrative Code (F.A.C.). The purpose of the limited proceeding is for the Commission to approve the Revised Stipulation and Settlement Agreement (Agreement) which is attached as an exhibit to DEF's Petition. The Agreement is executed by DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphate, and the Federal Executive Agencies (FEA). This Agreement, if approved by this Commission, will revise and replace a prior Agreement which had previously been approved on March 8, 2012 in Order No. PSC-12-0104-FOF-EI.

DEF asserts that the approval of the Agreement is appropriate under the limited proceedings section of the statutes, Section 366.076, F.S., because it represents the settlement of issues within the Commission's jurisdiction in several existing and continuing Commission dockets. The Agreement, if approved, would resolve issues in each of the several dockets. The Agreement includes an adjustment in the Company's base rates which will become effective with the first billing cycle in January 2013. DEF included with its petition proposed tariff sheets reflecting the changes in the rates which would occur if the Agreement is approved.

On August 22, 2013, PCS Phosphate (PCS) filed a Petition to Intervene (Petition) in this docket.

Petition for Intervention

According to its Petition, PCS is a manufacturer of fertilizer products with plants and operations located within DEF's electric service territory, and as such, it receives service under various DEF rate schedules. PCS contends that, as a signatory to the original settlement agreement as well as a large customer of DEF, its interests will be affected by the Commission's decision in this matter. The proposed terms of the Agreement will directly impact the cost of power supplied by DEF to PCS Phosphate's facilities in and around White Springs, Florida, thereby affecting its production and operating costs, overall industry competitiveness, and level

of sustainable employment in the region. PCS Phosphate anticipates taking an active role in this proceeding.

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 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 (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).

Analysis & Ruling

It appears that PCS meets the two-prong standing test in Agrico. PCS is an industrial customer of DEF with plants and operations located within DEF's electric service territory, and its interests may be substantially affected by this proceeding. No objection to PCS's request for intervention has been filed. Therefore, PCS's petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., PCS takes the case as it finds it.


Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Petition to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs 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 docket to:

James W. Brew
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower
Washington, DC 20007-5201
Phone: 202-342-0800
Fax: 202-342-0807
jbrew@bbrslaw.com

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 30th day of August, 2013.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MTL

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.