

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 130208-EI  
ORDER NO. PSC-13-0456-PCO-EI  
ISSUED: October 11, 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 the Florida Retail Federation (FRF), DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (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 27, 2013, FRF filed a Petition to Intervene (Petition) in this docket.

Petition for Intervention

According to its petition, FRF is an established association with more than 8,000 members in Florida, many of whom are retail customers of DEF. FRF is also a signatory party to the Revised Stipulation and Settlement Agreement that is the subject of this docket. FRF states that the Commission's actions herein will affect the substantial interests of the many members of FRF who are customers of DEF by determining their costs for electrical service. Accordingly, FRF has petitioned for intervention to protect its members' interests while this Commission considers the Revised Stipulation and Settlement Agreement.

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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 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 through the proceeding....

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) the 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).

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 FRF meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FRF asserts that it is an association of Florida retailers, some of whom are DEF ratepayers. FRF contends that these members' substantial interests will be affected by this Commission's decision. FRF further states that this is the type of proceeding designed to protect its members' interests. Therefore, FRF's members meet the two-prong standing test of Agrico.



With respect to the first prong of the associational standing test, FRF asserts that its members are customers of DEF and that its members' substantial interests will be directly affected by the Commission's decision concerning the proposed revised settlement. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF's general scope of interest and activity. FRF is an association which represents its members' interests, and its members are commercial electricity users in the retail sales industry who purchase power from DEF. Accordingly, FRF's members' interests will be directly affected by the Commission's decision regarding the proposed settlement. As for the third prong of the associational standing test, FRF is seeking intervention in this docket to represent the interests of its members in seeking just and reasonable rates within the context of the proposed settlement. Therefore, FRF appears to be in a position to request the Commission to grant relief on behalf of its members.

No objection to FRF's request for intervention has been filed, and the time for doing so has expired.

Because FRF meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, FRF's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FRF 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 the Florida Retail Federation 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:

Robert Scheffel Wright  
John T. LaVia, III  
Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone 850-385-0070  
Facsimile 850-385-5416

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 11th day of October, 2013.



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EDUARDO E. BALBIS  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
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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.