

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement regarding discovery in dockets or proceedings affecting rates or cost of service processed with the Commission's proposed agency action procedure.

DOCKET NO. 140107-PU
ORDER NO. PSC-14-0328-PCO-PU
ISSUED: June 25, 2014

ORDER GRANTING MOTION TO INTERVENE

On May 20, 2014, the Office of Public Counsel (OPC) filed a Petition for Declaratory Statement (Petition) requesting that the Florida Public Service Commission (Commission) issue an order declaring that upon intervention in any proceeding affecting rates or cost of service that the Commission processes under proposed agency action (PAA) procedures, Sections 350.0611(1), 366.093(2), 367.156(2), Florida Statutes (F.S.), and Rule 28-106.206, Florida Administrative Code (F.A.C.), authorize OPC to conduct discovery prior to the issuance of the Commission's written Notice of Proposed Agency Action.

Utilities, Inc.'s Motion to Intervene

On June 12, 2014, Utilities, Inc. (UI) filed its motion to intervene in this proceeding. UI states that its interests are substantially affected by this proceeding. UI contends that its 12 regulated subsidiaries regularly file for rate relief using the PAA procedure. UI alleges that if OPC's interpretation of the PAA procedure is adopted by the Commission, it will drastically increase the rate case expense incurred by UI's subsidiaries, will exacerbate an already tight deadline within which the Commission is required to rule in a PAA proceeding, and is contrary to the purpose of the PAA process.

OPC's Response to Utilities, Inc.'s Motion to Intervene

On June 16, 2014, OPC filed a response to UI's motion to intervene, and on June 18, 2014, OPC filed an amended response (referred to together as "OPC's Response"). OPC states that it does not object to an order granting UI's motion to intervene provided that, in the interests of fairness, the Commission requires UI to submit any arguments in opposition to OPC's Petition for Declaratory Statement it intends to present that are not included in UI's motion to intervene by a date certain and affords OPC an opportunity to respond to such arguments prior to the time the Commission takes up the Petition. In addition, OPC responds in detail to the allegations raised in UI's motion to intervene, and argues against what it alleges is UI's implication that OPC is advancing a new interpretation that will change the manner in which the Commission processes PAA cases.

Standard for Intervention

Pursuant to Rule 28-105.0027(1), F.A.C., persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. Petitions for leave to intervene must be filed within 21 days after publication of the Notice of the Petition for Declaratory Statement in the Florida Administrative Register. The motion to intervene 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 declaratory statement. Rule 28-105.0027(1), F.A.C., states that the presiding officer shall allow for intervention of persons meeting the requirements for intervention of the rule, and that the presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

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) it will suffer injury in fact which is of sufficient immediacy to entitle it to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature that the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses 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

Based upon a review of UI’s motion to intervene, it appears that UI has complied with the requirements of Rule 28-105.0027, F.A.C., and meets the two-prong standing test in Agrico. UI asserts that its 12 regulated subsidiaries in Florida regularly file for rate relief utilizing the PAA procedure and that if the interpretation of the PAA procedure sought by OPC is adopted by the Commission, it would drastically increase the rate case expense incurred by the Utility’s subsidiaries and would exacerbate the tight deadline within which the Commission must rule in a PAA proceeding. The motion to intervene demonstrates how UI’s substantial interests will be affected by the declaratory statement and that this substantial injury is of a type or nature that the proceeding is designed to protect. Therefore, UI meets the requirements of Rule 28-105.0027, F.A.C., and the two-prong standing test of Agrico.

Section 28-105.0027(1), F.A.C., requires the presiding officer to allow intervention of persons meeting the requirements for intervention of Rule 28-105.0027, F.A.C. UI’s motion to intervene meets the requirements of Rule 28-105.0027, F.A.C., and, therefore, intervention shall be allowed.

OPC asks that intervention be conditioned upon UI submitting any arguments in opposition to OPC's Petition for Declaratory Statement that it intends to present that are not included in UI's motion to intervene by a date certain and afford OPC an opportunity to respond to such arguments prior to the time the Commission takes up the Petition. Rule 28-105.0027, F.A.C., states that a presiding officer may impose conditions on the intervenor to limit prejudice to other parties. OPC's concern is that if the Commission allows the parties to participate in the agenda conference in this docket, it would be unfair if UI were to make an argument that is not mentioned in UI's motion to intervene. This concern does not rise to the level of prejudice. There is no requirement that parties participating at agenda conference on a declaratory statement petition must give prior written notice to the other parties of every argument they intend to or might make.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Utilities, Inc.'s Motion to Intervene 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 documents which may hereinafter be filed in this proceeding to:

Martin S. Friedman
Friedman, Friedman & Long
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
Telephone: (407) 830-6331
Email: mfriedman@ffllegal.com

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 25th day of
June, 2014.



JULIE I. BROWN

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.

KWC

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.