

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that the Osprey Plant acquisition or, alternatively, the Suwannee Simple Cycle Project is the most cost effective generation alternative to meet remaining need prior to 2018, by Duke Energy Florida, Inc.

DOCKET NO. 150043-EI
ORDER NO. PSC-15-0121-PCO-EI
ISSUED: March 6, 2015

ORDER GRANTING PETITION TO INTERVENE

On January 30, 2015, Duke Energy Florida, Inc. (“DEF” or “Company”) asked the Florida Public Service Commission (“Commission”) for a determination that the Calpine Construction Finance Company, L.P. (“Calpine”) Osprey Plant acquisition is the most cost-effective generation to meet its need for additional generation capacity prior to 2018. DEF has executed an Asset Purchase and Sale Agreement with Osprey Energy Center, LLC (“Osprey LLC”), as the assignee of Calpine. In the alternative, if it cannot purchase the Osprey Plant, DEF asks for a determination that construction of its Suwannee Simple Cycle Project is the most cost-effective generation to meet the Company’s stated need.

Petition for Intervention

By petition dated February 25, 2015, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG states that it is an ad hoc association consisting of industrial users of electricity in the state of Florida. FIPUG asserts that the cost of electricity constitutes a significant portion of its members’ overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. FIPUG also argues, as large retail customers of DEF, numerous members will be required to fund the costs of the proposed acquisition of the Osprey Plant and, alternatively, the construction of the Suwannee Simple Cycle project. FIPUG submits that its members will be directly and substantially affected by the outcome of these proceedings. No party has filed an objection to FIPUG’s petition, and the time for doing so has expired.

Standards 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 FIPUG meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FIPUG asserts that it is an association of Florida industrial electricity users, some of whom are DEF ratepayers. FIPUG contends that, as large retail customers of DEF, numerous members will be required to fund the costs of the proposed acquisition of the Osprey Plant and, alternatively, the construction of the Suwannee Simple Cycle project. As such, these members’ substantial interests will be affected by this Commission’s decision in this proceeding. FIPUG further states that this is the type of proceeding designed to protect its members’ interests.

With respect to the first prong of the associational standing test, FIPUG asserts that its members are customers of DEF and that its members’ substantial interests will be directly affected by the Commission’s decision regarding the proposed Osprey Plant acquisition and, alternatively, construction of the Suwannee Simple Cycle project. With respect to the second prong of the associational standing test, FIPUG asserts that the subject matter of this proceeding appears to be within FIPUG’s general scope of interest and activity. FIPUG is an association which represents its members’ interests, and its members are industrial electricity users who purchase power from DEF. Accordingly, FIPUG’s members’ interests will be directly affected by the decisions this Commission makes regarding the DEF petition. As for the third prong of

the associational standing test, FIPUG is seeking intervention in this docket to represent the interests of its members in seeking just and reasonable rates. Therefore, FIPUG appears to be in a position to request the Commission to grant relief on behalf of its members.

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

Based on the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Petition to Intervene filed by the Florida Industrial Power Users Group 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:

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By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 6th day
of March, 2015.



JULIE I. BROWN

Commissioner and Prehearing Officer

Florida Public Service Commission

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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.

CWM

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.