

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.

DOCKET NO. 150148-EI

In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.

DOCKET NO. 150171-EI
ORDER NO. PSC-15-0395-PCO-EI
ISSUED: September 16, 2015

ORDER GRANTING PETITION TO INTERVENE
OF THE FLORIDA RETAIL FEDERATION

In February 2013, Duke Energy Florida, Inc. (DEF) announced its decision to retire its nuclear plant, Crystal River Unit 3 (CR3), in Citrus County, Florida. The retirement of CR3 was the subject of two settlement agreements. The first settlement agreement, reached in 2012, was replaced by the second settlement agreement, the 2013 Revised and Restated Stipulation and Settlement Agreement (“RRSSA”).¹ Among other things, the RRSSA contemplated that DEF would create a regulatory asset to account for the recovery of costs associated with the retirement of CR3.

On May 22, 2015, pursuant to Sections 366.04(1) and 366.05, Florida Statutes, (F.S.), and in accordance with the RRSSA, DEF filed a petition with the Commission requesting approval to include in base rates the revenue requirement for the CR3 Regulatory Asset along with supporting testimony and exhibits. DEF asserts that it has complied with the RRSSA and is therefore entitled to recover the value of the CR3 Regulatory Asset in base rates. Further, DEF asserts all reasonable and prudent efforts were used to maximize salvage value and minimize costs that were charged to the CR3 Regulatory Asset for the benefit of DEF’s customers

On August 31, 2015, DEF filed a Motion for Approval of Stipulation and Stipulation of only the CR3 Regulatory Asset-related issues in this docket and the wording of the RRSSA. By petition, dated September 14, 2015, The Florida Retail Federation (FRF), a signatory to the RRSSA and Stipulation, has requested permission to intervene in this proceeding. No parties object to FRF’s request.

¹ See, Order No. PSC-13-0598-FOF-EI, issued November 12, 2013, in Docket No. 130208-EI, as amended by Order No. PSC-13-0598A-FOF-EI, issued November 13, 2013, 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.

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 a signatory party to the Stipulation and a signatory party to the RRSSA. 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 DEF's Stipulation on the CR3 Regulatory Asset-related issues in this docket.

Standard for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, (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 25-106.201, (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 (Fla. 2nd DCA 1981). The intervenor must show (1) he or she will suffer injury in fact which is of sufficient immediacy to entitle the intervenor to a Section 120.527, 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 and 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 Stipulation of the CR3 Regulatory Asset issues. 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 that 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 Stipulation. 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 Stipulation. Therefore, FRF appears to be in a position to request the Commission to grant relief on behalf of its members.

None of the existing parties in this matter object to FRF's request for intervention.

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.

Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by The Florida Retail Federation 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:

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 16th day
of September, 2015.



RONALD A. BRISÉ
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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.

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.