

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of IOUs' hedging practices.

DOCKET NO. 170057-EI
ORDER NO. PSC-17-0215-PCO-EI
ISSUED: June 12, 2017

ORDER GRANTING MOTION WITHDRAWING PARTY STATUS

This docket was opened by Commission staff on February 28, 2017, to review the natural gas hedging practices used by Florida's generating investor-owned electric utilities (IOUs).¹ Natural gas hedging practices were at issue in the 2015 and 2016 Fuel Clause dockets² as well as being the subject of a workshop held on February 21, 2017, in which all of the IOUs, including Gulf Power Company (Gulf), participated.

On March 27, 2017, Commission staff filed a recommendation advising that a risk-responsive approach to natural gas hedging was appropriate. Staff's proposed agency action recommendation was considered at the Commission's April 4, 2017 Agenda Conference, where it was decided that this docket would be set directly for hearing. At that time all of the IOUs were listed as parties of record. The Office of Public Counsel (OPC), Sierra Club, Florida Industrial Power Users (FIPUG), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate-White Springs, have subsequently been acknowledged as an intervenor or granted intervenor status in this docket.³

On May 30, 2017, Gulf filed a Motion Withdrawing Party Status (Motion) arguing that the Settlement Agreement in its recently concluded rate case⁴ prohibited it from executing new hedges until January of 2021. That being the case, Gulf argued that it should not be required to expend resources to litigate policy and facts that could not affect it until January of 2021 and that might be further modified during the four-year intervening period. Gulf has contacted all the parties to this docket and their positions are as follows: Duke Energy Florida LLC, Florida Power & Light Company, Tampa Electric Company, OPC, and PCS Phosphate-White Springs take no position; FIPUG supports the motion; and the Sierra Club does not oppose the motion.

In evaluating whether to grant this motion I find that the appropriate standard to use is whether Gulf is an indispensable party to this docket. The concept of indispensable party is not specifically defined in the Florida Administrative Code. The courts have defined an "indispensable party" as one who has such an interest in the subject matter of the action that a final adjudication cannot be made without affecting the party's interest or without leaving the controversy in such a situation that its final resolution may be inequitable. W.R. Cooper, Inc. v.

¹ Florida Power & Light Company, Duke Energy Florida, LLC, Tampa Electric Company and Gulf Power Company.

² Docket Nos. 150001-EI and 160001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

³ Order No. PSC-17-0117-PCO-EI, issued March 31, 2017; Order No. PSC-17-0179-PCO-EI, issued May 17, 2017; Order No. PSC-17-0180-PCO-EI, issued May 17, 2017; Order No. PSC-17-0181-PCO-EI, issued May 17, 2017.

⁴ Order No. PSC-17-0178-S-EI, issued May 16, 2017, in Docket No. 160186-EI, In re: Petition for rate increase by Gulf Power Company.

City of Miami Beach (Cooper), 512 So. 2d 324, 326 (Fla. 3d DCA 1987). This definition has been used by the Commission in past orders and I find it appropriate to use it here.⁵

The first definition of indispensable party as stated in Cooper is whether the decision in the proceeding will necessarily affect that party's interests. Whatever policy is set in this docket with regard to natural gas financial hedging would be applicable to Gulf but for the terms of the Settlement Agreement prohibiting Gulf from engaging in hedging activities until January of 2021. Further, the natural gas hedging policy set in this docket will apply to Gulf in January 2021 unless that policy is further modified in another proceeding before that date. Because the natural gas hedging policy developed in this docket could be further modified in the intervening four-year period, Gulf's contention that the effect of this docket on Gulf cannot be determined at this time is plausible. Therefore, I find that Gulf does not fall within the first Cooper indispensable party definition.

The second Cooper definition of indispensable party is that an equitable final decision in the proceeding cannot be fashioned without that party. In this case the question can be phrased: Does Gulf have any information known or available only to Gulf that is necessary to the development of an equitable natural gas hedging policy? There are basically two types of information that are known or available only to Gulf: its historical and estimated natural gas hedging cost and expense data and estimates of capital costs and expenses that would be needed to implement various proposed natural gas hedging protocols, e.g., risk-responsive hedging or a financial call option strategy. Gulf has already filed its actual 2016 natural gas hedging data in the Fuel Docket, Docket No. 170001-EI, which will be the subject of a Commission audit that is also filed in the Fuel Docket. With regard to the estimated costs for implementing various natural gas hedging proposals, it does not appear that Gulf is so unique in the operation of its generation fleet that its data would be radically different than that of its peers which will be available for our consideration in this proceeding.⁶ That being the case, I find that it is possible for the Commission to reach an equitable final decision in this proceeding without Gulf being a party to the docket.

In reaching this decision I have also given consideration to the fact that no party to this proceeding objects to Gulf being allowed to withdraw at this time. Finally, I would remind Gulf that even though no longer a party to this docket, it continues to be subject to the ex parte communications provisions of Section 350.042(1), F.S.

Based on the above, it is

⁵ Order No. PSC-99-0648-PCO-WS, issued April 6, 1999, in Docket No. 981609-WS, In re: Emergency petition to eliminate authority of Southlake Utilities, Inc. to collect all service availability AFPI charges in Lake County; Order No. PSC-04-1204-FOF-TP, issued December 3, 2004, in Docket No. 041144-TP, In re: Complaint against KMC Telecom III, LLC, KMC Telecom V, Inc., and KMC Data LLC for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs and for alleged violation of Section 364.16(3)(a), F.S., by Sprint-Florida Incorporated.

⁶ If this is subsequently determined not to be the case, Gulf remains subject to the provisions of Section 366.04(2)(f), F.S., and Rule 28-106.206, F.A.C.

ORDERED by Ronald A. Brisé, as Prehearing Officer, that Gulf Power Company's Motion Withdrawing Party Status is hereby granted.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 12th day of June, 2017.



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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.

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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.