

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric  
conservation goals (Duke Energy Florida,  
LLC).

DOCKET NO. 20190018-EG  
ORDER NO. PSC-2019-0185-PCO-EG  
ISSUED: May 23, 2019

ORDER GRANTING INTERVENTION

On January 15, 2019, Docket Nos. 20190015-EG, 20190016-EG, 20190017-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG were established to review and adopt the corresponding utility's conservation goals pursuant to Sections 366.80-.83 and 403.519, Florida Statutes (F.S.), known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). By the Order Consolidating Dockets and Establishing Procedure, Order No. PSC-2019-0062-PCO-EG, issued on February 18, 2019, the dockets were consolidated for purposes of hearing and controlling dates were established. The dockets are currently scheduled for hearing from August 12, 2019, through August 16, 2019.

Petition for Intervention

By petition dated May 2, 2019, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs (PCS Phosphate) requested permission to intervene in this proceeding with respect to Docket No. 20190018-EG. PCS Phosphate states it is a manufacturer of fertilizer products with plants and operations located within Duke Energy Florida's (DEF) electric service territory. As such, it receives service under various DEF rate schedules. It argues that the Commission's decisions regarding DEF's energy conservation goals may impact the cost of power supplied by DEF to PCS Phosphate's facilities in and around White Springs, Florida, thereby affecting PCS Phosphate's production and operating costs, and overall industry competitiveness.

Standard for Intervention

Pursuant to Rule 28-106.205 of the 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 move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), 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. Intervenors take the case as they find it. Rule 25-22.039, F.A.C.

To have standing, the intervenor must meet the two-prong standing test set forth in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d

DCA 1981). The intervenor must show that (1) he will suffer injury in fact that 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 that the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. *Id.* The second deals with the nature of the injury. *Id.* The “injury in fact” must be both real and immediate and not speculative or conjectural. *Int’l Jai-Alai Players Ass’n v. Fla. Pari-Mutuel Comm’n*, 561 So. 2d 1224, 1225–26 (Fla. 3d DCA 1990); *see also Village Park Mobile Home Ass’n, Inc. v. State, Dep’t of Bus. Reg.*, 506 So. 2d 426, 431, 434 (Fla. 1st DCA 1987) (on motion for rehearing) (holding that speculative injuries do not satisfy the test’s first prong).

### Decision

Based on PCS Phosphate’s representations, it meets both prongs of *Agrico’s* standing test. As an industrial customer within DEF’s service area, its substantial interests will be directly affected by the Commission’s decisions as to the appropriate conservation goals and programs. PCS Phosphate has established standing in this proceeding, and it takes the case as it finds it.

Pursuant to Rule 28-106.204(3), F.A.C., all motions, other than a motion to dismiss, must include a statement that the movant has conferred with all other parties of record and whether each party has any objection to the motion. If the movant was unable to contact the other parties before filing the motion, the movant must provide information regarding the date(s) and method(s) by which contact was attempted. PCS Phosphate failed to meet this requirement. However, PCS Phosphate appears to have served a copy of its motion on the other parties to this proceeding and the time to file a response in opposition to PCS Phosphate’s motion has expired. Nonetheless, PCS Phosphate should have informed the Commission in its motion whether any parties objected, after conferring with them, or it should have provided a statement that it attempted but was unable to confer with the parties.

PCS Phosphate is reminded that the Uniform Rules of Procedure apply to Commission proceedings, and it will be expected to comply with these rules in the future.

Based on the above representations, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Petition to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs is hereby granted to Docket No. 20190018–EG, as set forth in the body of this Order. It is further

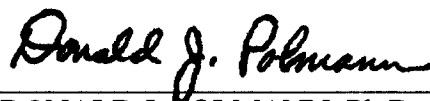
ORDERED that White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate - White Springs takes the case as it finds it. It is further

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 Donald J. Polmann, as Prehearing Officer, this 23rd day  
of May, 2019.



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DONALD J. POLMANN, Ph.D., P.E.  
Commissioner and Prehearing Officer  
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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.

ABK

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.