

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20190007-EI
ORDER NO. PSC-2019-0409-PCO-EI
ISSUED: October 8, 2019

ORDER GRANTING INTERVENTION TO SIERRA CLUB

BY THE COMMISSION:

Background

As part of the Florida Public Service Commission's (Commission) continuing Environmental Cost Recovery Clause (ECRC) proceeding, the Commission has set a hearing for November 5 through 7, 2019. The ECRC proceeding allows investor-owned electric utilities to seek recovery of their costs for approved conservation programs on an annual basis. Jurisdiction is vested in the Commission through Section 366.8255, Florida Statutes (F.S.).

Petition for Intervention

By motion dated October 1, 2019, the Sierra Club requests permission to intervene in this proceeding (Motion). Sierra Club argues that it and its members share substantial interests in reducing pollution from, and avoiding imprudent expenditures on, coal burning power plants such as Gulf Power Company's (Gulf) Interest in Plant Daniel. Costs associated with Plant Daniel are a subject of this proceeding. Sierra Club seeks party status to protect the interests of its Florida members who buy electric service from Gulf. Sierra Club avers that the Commission has consistently allowed Sierra Club to intervene in its proceedings, including last year's environmental cost recovery clause proceeding. Sierra Club's Motion is unopposed.

Standards for Intervention

Pursuant to Rule 28-106.205, 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.

To have standing, the intervenor must meet the three-prong standing test set forth in Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the

basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).¹ 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. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

To this end, Sierra Club asserts that if the Commission approves Gulf Power's petition, Sierra Club members who buy electric service from Gulf Power could very well face higher electric rates as early as January of next year. The Commission has consistently recognized such adverse rate impacts as sufficiently immediate injuries-in-fact for intervention. Sierra Club argues that this proceeding is governed by section 366.8255, F.S., and allows recovery of only "prudently incurred environmental compliance costs." Thus, according to plain statutory language, this proceeding is designed to protect interests like those shared by Sierra Club and its members: to secure the benefits of prudent environmental compliance costs—such as reduced pollution from Plant Daniel—while avoiding imprudent costs—such as costs that a reasonable utility would not sink into projects merely to extend the life of this aging power plant.

More specifically, Sierra Club argues that the first prong of the associational test is met because more than 1,000 of its members buy electric service from Gulf Power. These members' electric rates could rise if the Commission approves Gulf Power's petition.

Sierra Club avers that the second prong of the associational test is met because clean-up costs for burning coal at Plant Daniel are under review in this proceeding, and such costs fall within Sierra Club's interests and activities, as demonstrated by Sierra Club's past advocacy before the Commission, as well as its participation in a Mississippi case related to Plant Daniel.

Sierra Club contends that the third prong of the associational test is met because Sierra Club will either seek denial or approval with conditions or recovery costs, not money damages.

Sierra Club concludes that its intervention in this proceeding is integral to safeguarding its and its members' substantial interests in paying prudently low electric rates that reflect Gulf's use of environmentally responsible and economically efficient generation sources.

¹ Under Agrico, 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. 406 So. 2d 478 at 482. 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. 3d 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).

Upon review, I find that Sierra Club has met the requirements for intervention in this docket. Thus, I shall grant its Motion.

Based on the above representations, it is


ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Sierra Club is hereby granted as set forth in the body of this Order. It is further

ORDERED that Sierra Club 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:

Diana A. Csank
50 F St. NW, Suite 800
Washington, D.C. 20001
202-548-4595 (direct)
Diana.csank@sierraclub.org

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 8th day of October, 2019.



GARY F. CLARK
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.

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.