

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael, by Gulf Power Company.

DOCKET NO. 20190038-EI
ORDER NO. PSC-2019-0512-PCO-EI
ISSUED: December 6, 2019

ORDER GRANTING INTERVENTION

On February 5, 2019, pursuant to Section 366.076(1), Florida Statutes (F.S.), and the provisions of the Stipulation and Settlement Agreement approved by Order No. PSC-2017-0178-S-EI,¹ Gulf Power Company (Gulf) filed its Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Michael. By Order No. PSC-2019-0221-PCO-EI, issued on June 3, 2019, the Commission approved the requested 2019 Interim Storm Restoration Recovery Charge for a period of 60 months and required Gulf to file documentation of the actual storm costs for review and true up of any excess or shortfall. Gulf submitted its actual storm costs on November 15, 2019.

Petition for Intervention

By motion dated April 16, 2019, the Federal Executive Agencies (FEA) requested permission to intervene in this proceeding. The FEA states that it consists of certain agencies of the United States Government that have offices, facilities, and/or installations in Gulf's service area that purchase electric service from Gulf. According to the FEA, electricity costs represent one of the largest variable operating expenses, and thus its agencies, as retail customers of Gulf, will be directly and substantially affected by the outcome of this proceeding. No party has filed an objection to FEA's petition, and the time for doing so has expired.

Standards for Intervention

Pursuant to Rule 28-106.205, 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.

¹ Order No. PSC-2017-0178-S-EI, issued May 16, 2017, in Docket No. 20160186-EI, *In re: Petition for rate increase by Gulf Power Company*; and Docket No. 20160170-EI, *In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company*.

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).² 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.

It appears that the FEA has met the associational standing requirements of *Florida Home Builders* as stated above. FEA asserts that it represents a number of federal agencies that are ratepayers of Gulf and as a result are directly and substantially affected by the decision in this case. Further, keeping electricity costs as low as possible falls within the purview of FEA's general scope of interest and is the type of relief appropriate for FEA to receive on behalf of the federal agencies it represents. Therefore, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by the Federal Executive Agencies is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Federal Executive Agencies 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:

THOMAS A. JERNIGAN
AFCEC/JA
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
(850) 283-6663
thomas.jernigan.3W@us.af.mil

Org Box E-mail:
ULFSC.Tyndall@US.AF.MIL

² 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).

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ROBERT J. FRIEDMAN, Capt, USAF
AFLOA/JACE-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
(850) 282-8863
robert.friedman.5@us.af.mil

EBONY M. PAYTON
AFCEC/CN-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
(850) 283-6236
ebony.payton.ctr@us.af.mil

ARNOLD BRAXTON, TSgt, USAF
AFLOA/JACE-ULFSC
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
(850) 283-6289
arnold.braxton@us.af.mil

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 6th day
of December, 2019.



ANDREW GILES FAY
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.

KBS

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.