

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to approve transaction for accelerated decommissioning services at CR3 facility, transfer of title to spent fuel and associated assets, and assumption of operations of CR3 facility pursuant to the NRC license, and request for waiver from future application of Rule 25-6.04365, F.A.C. for nuclear decommissioning study, by Duke Energy Florida, LLC.

DOCKET NO. 20190140-EI
ORDER NO. PSC-2019-0522-PCO-EI
ISSUED: December 16, 2019

ORDER GRANTING PETITION TO INTERVENE

On July 10, 2019, Duke Energy Florida, LLC filed its petition to approve the accelerated decommissioning of its Crystal River Unit 3 (CR3) nuclear power plant and the transfer of spent fuel and associated assets, license and operations to Accelerated Decommissioning Partners, LLC (ADP) and its affiliates. The Office of Public Counsel filed its Notice of Intervention on July 15, 2019, which was acknowledged by Order No. PSC-2019-0282-PCO-EI, issued on July 16, 2019. An Order Establishing Procedure, Order No. PSC-2019-0320-PCO-EI, was issued on August 2, 2019, and modified by Order No. PSC-2019-0384-PCO-EI, issued on September 20, 2019.

Petition for Intervention

By petition dated October 8, 2019, the Florida Industrial Power Users Group (FIPUG) has requested permission to intervene in this proceeding, conduct discovery, raise issues of material fact, and otherwise participate as a full party. FIPUG states that it is an ad hoc association consisting of industrial users of electricity in Florida, a substantial number of whom receive electricity from DEF.

FIPUG alleges that the cost of electricity constitutes a significant portion of FIPUG members' overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. Thus, FIPUG argues that its members will be directly and substantially affected by the outcome of this case and the recovery, if allowed, of the costs associated with the decommissioning of CR3.¹ FIPUG further states that the subject matter of this petition, the collection of decommissioning costs from ratepayers, is within FIPUG's general scope of interest and activity. FIPUG argues that it routinely appears on behalf of its members in cases concerning utility regulation and the setting of rates and charges by electric utilities. Finally, FIPUG states that the relief it is seeking is of the type appropriate for it to receive on behalf of its members pursuant to Rule 28-106.205(1), Florida Administrative Code (F.A.C.). For these reasons, FIPUG contends that it has complied with the requirements of *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So.

¹ *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

2d 351 (Fla. 1982), for an organization to demonstrate associational standing on behalf of its members.

FIPUG has contacted DEF who does not oppose FIPUG's petition for intervention. Further, the time for filing objections to FIPUG's petition for intervention has expired with no objections having been filed.

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).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.

FIPUG has standing in this proceeding as it meets the three-prong standing test set forth for associations in *Florida Home Builders*: 1) a substantial number of its members may be substantially affected by the Commission's decision to allow the recovery of CR3 decommissioning costs by DEF; 2) FIPUG's general scope of interest and activity is to make sure that electric utilities' rates charged to its members are fair, just and reasonable; and 3)

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).

electric rate reduction is the type of relief appropriate for FIPUG to receive on behalf of its members.

Based on these representations, it is


ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Petition to Intervene filed by Florida Industrial Power Users Group is hereby granted as set forth in the body of this Order. It is further

ORDERED that FIPUG 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 16th day of December, 2019.



DONALD J. POLMANN, Ph.D., P.E.
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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.