

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20200092-EI
ORDER NO. PSC-2020-0215-PCO-EI
ISSUED: June 26, 2020

ORDER GRANTING INTERVENTION

Section 366.96, Florida Statutes (F.S.), enacted by the 2019 Florida Legislature, sets forth standards for “transmission and distribution storm protection plans” (plan or plans) and for the recovery of costs associated with such plans. Pursuant to this statute and its implementing rules, each public utility must file with the Public Service Commission (Commission) a plan explaining its systematic approach to reducing restoration costs and outage times associated with extreme weather events and enhancing reliability over the immediate 10-year planning period. Subsection 366.96(3), F.S. Every three years, the Commission is to determine whether it is in the public interest to approve, approve with modification, or deny each utility’s plan. Subsections 366.96(5) and 366.96(6), F.S. Annually, the Commission is to conduct a proceeding to determine a utility’s prudently incurred plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. Subsection 366.96(7), F.S.

This docket was established as the 2020 storm protection plan cost recovery clause for all public utilities. If the Commission determines in this docket that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. This matter has been scheduled for an administrative hearing October 13-15, 2020.

Petition for Intervention

On April 15, 2020, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) filed a petition to intervene in this proceeding. PCS Phosphate avers that it is a manufacturer of fertilizer products with plants and operations located in the electric service territory of Duke Energy Florida (DEF). PCS Phosphate represents that it receives service from DEF under various rate schedules.

PCS Phosphate alleges that any decisions made by the Commission regarding rate recovery of costs associated with DEF’s plan will directly impact the cost of power supplied by DEF to PCS Phosphate's facilities located in and around White Springs, Florida, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region.

DEF and the Office of Public Counsel do not oppose the petition to intervene. Tampa Electric Company and Florida Public Utilities Company take no position. Florida Power & Light

Company and Gulf Power Company object to the petition and assert that PCS Phosphate does not have standing with regard to the Gulf and FPL storm protection plan cost recovery clauses because PCS is not a customer of those utilities. None of the utilities filed responses to the petition and the time for doing so has expired.

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 two-prong standing test set forth in Agrico Chemical Company 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. The second deals with the nature of the injury. 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).

PCS Phosphate meets the first prong of Agrico in that the amount it pays in electric rates may be affected by this proceeding. PCS Phosphate meets the second prong of Agrico because the purpose of this proceeding is to consider the recovery of costs associated with plans through implementation of rates. Based on the foregoing, PCS meets both prongs of Agrico.

Florida Power and Light and Gulf Power correctly note that PCS Phosphate's substantial interests are potentially impacted by only DEF's rates. However, PCS Phosphate can protect its substantial interests only by intervening in this clause docket, the scope and purpose of which include consideration of cost recovery for the plans of all public utilities. Because "standing depends on the nature of the injury asserted and the purpose and scope of the administrative proceeding,"¹ PCS Phosphate has standing to intervene in this docket.

¹ Peace River/Manasota Regional Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1083 (Fla. 2d DCA 2009) (emphasis added) (citations omitted).

Based on the above representations, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate –White Springs (PCS Phosphate) is hereby granted 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 (PCS Phosphate) 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 Andrew Giles Fay, as Prehearing Officer, this 26th day of June, 2020.



ANDREW GILES FAY
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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.

SPS

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.