

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 20210007-EI
ORDER NO. PSC-2021-0258-PCO-EI
ISSUED: July 19, 2021

ORDER GRANTING INTERVENTION

The Environmental Cost Recovery Clause (ECRC) allows investor-owned electric utilities to seek recovery of their costs for approved conservation programs on an annual basis, pursuant to Section 366.8255, Florida Statutes (F.S.). As part of the Florida Public Service Commission's (Commission's) continuing ECRC proceeding, the Commission has set a hearing in this docket for November 2 – 4, 2021. Order Nos. PSC-2021-0078-PCO-EI and PSC-2021-0210-PCO-EI set forth the procedural requirements for all parties.

Petition for Intervention

On May 17, 2021, Nucor Steel Florida, Inc. (Nucor) filed its Petition for Intervention. In its Petition, Nucor states that it owns and operates a steel production facility located within Duke Energy Florida, LLC's (DEF) electric service territory. Nucor explains that it purchases substantial amounts of electric energy from DEF to power its steel making operations. Nucor continues that the outcome of the ECRC proceeding can affect the rates paid by DEF customers, and because Nucor purchases substantial amounts of electric energy from DEF, the outcome of this proceeding may adversely affect Nucor's interests. Nucor therefore argues that because its substantial interests may be affected by the ECRC proceeding, it should be granted intervention. Nucor's Petition is unopposed. No written responses were filed regarding the Petition, and the time for doing so has expired.

Standard 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.

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).

Analysis & Ruling

Based on the above representations, it appears that Nucor has met the standing requirements of *Agrico* as stated above. As to the first prong, Nucor is subject to DEF's electric rates, and the amount it pays in electric rates may be affected by this proceeding. Nucor meets the second prong of *Agrico* because the ECRC proceeding will address DEF's recovery of costs associated with its environmental conservation programs, which can affect Nucor's interests as a customer. Therefore, Nucor's Petition shall be granted with respect to its intervention in this proceeding as a customer of DEF.

Based on the above representations, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Petition to Intervene filed by Nucor Steel Florida, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Nucor Steel Florida, Inc. 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 19th day of July, 2021.



ANDREW GILES FAY
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.

AJW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 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.