

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail
rates of Florida Power & Light
Company.

DOCKET NO. 001148-EI
ORDER NO. PSC-01-2429-PCO-EI
ISSUED: December 12, 2001

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

By petition, dated October 30, 2001, Publix Super Markets, Inc. (Publix) has requested permission to intervene in this proceeding. In its petition, Publix argues that it will be directly and substantially affected by any action the Commission takes in this docket. Publix states it has a substantial interest in the outcome of Phase 2 of this proceeding. Publix develops, owns, operates, and maintains 524 supermarket facilities throughout the state of Florida. In addition, Publix owns and operates seven distribution centers and two manufacturing facilities to serve its supermarkets. Publix maintains it is one of the largest retail consumers of electricity in Florida and purchases significant amounts of electricity from Florida Power & Light (FP&L). Further, its continued business operations are directly affected by the cost and availability of reliable electric service.

Publix states that in Phase 2 of this proceeding, the Commission will consider issues directly affecting the rates Publix will pay in its continued business operations. These will be affected by (i) any cost adjustments made to the current approved Utility tariff rates applicable to the purchase of electricity by Publix and (ii) the formation of the proposed regional transmission organization ("RTO") currently known as GridFlorida. Publix asserts it is in the unique position of owning and operating both commercial and industrial facilities. This combination, it claims makes its interests unique and such interests cannot be adequately represented by any other party. Furthermore, Publix contends the Commission has granted full party status on this docket for other parties based on the fact that such parties are retail customers of FP&L.

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Publix also states that any adjustments to FP&L's tariff rates for electricity which result from these proceedings will have profound effects on Publix's access to reliable and competitively priced electricity. Publix asserts that, as one of the largest retail consumer of electricity in Florida, its continued business operations are directly affected by the cost and availability of reliable and affordable electric service. Therefore, Publix states, it has a direct and substantial interest in the outcome of this proceeding.

CASE BACKGROUND

On September 10, 2001, Publix filed a petition to intervene in this Docket. The Commission granted Publix's petition to intervene in Order No. PSC-01-1959-PHO-EI dated October 1, 2001, but limited such intervention to Phase I of the proceedings on this Docket. This limitation was without prejudice to the rights of Publix to petition to intervene in Phase 2 of the proceedings on this docket. On October 30, 2001 Publix filed a Petition to Intervene in Phase 2 of Docket because Phase 2 proceedings are ongoing and Publix perceives that issues critical to its substantial interests are currently being determined. In its motion, Publix also disputes issues of material fact for Phase 2. On November 13, 2001, Florida Power & Light Company filed a Response to Publix Super Market Inc's Petition to Intervene, stating that as Publix is a large retail consumer of electricity, FPL does not generally object to Publix's intervention. However, FP&L objected to Publix's list of disputed issues of material fact. FP&L asserts that a statement of disputed issues of material fact is not dispositive of what the issues should be in the proceeding. FP&L asserts that issues should be developed through the Commission's usual issue identification process, leading to an prehearing order setting forth the issues for final hearing.

ANALYSIS AND FINDINGS

For a potential intervenor to demonstrate that its substantial interests will be affected by a proceeding, the potential intervenor must show: (a) it will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy to entitle it to a hearing; and (b) the injury suffered is a type against which the proceeding is designed to

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protect. See, Ameristeel Corp. v. Clark, 691 So. 2d 473, 477 (Fla. 1997). Publix is a retail customer of FPL. It appears that Publix's substantial interests may be affected by this proceeding. Pursuant to Rule 25-22.039, Florida Administrative Code, Publix takes the case as it finds it. The issues of material fact will be developed as the case proceeds.

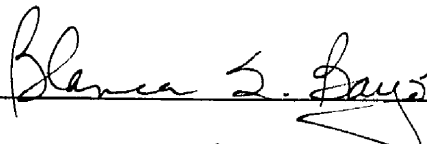
Therefore, it is

ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Publix is hereby granted. 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. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street
Suite 1400
Orlando, Florida 32802-3068

By ORDER of the Florida Public Service Commission this 12th day of December, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LHD

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.