

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.

DOCKET NO. 100136-EI
ORDER NO. PSC-10-0226-PCO-EI
ISSUED: April 9, 2010

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

On March 18, 2010, Progress Energy Florida, Inc. (PEF or the Company) filed its Petition for Approval of Accounting Order to Record a Depreciation Expense Credit (PEF's Petition) requesting that the Florida Public Service Commission (Commission) approve and enter an Accounting Order, allowing the Company to record a reduction in its cost of removal component of its depreciation expense, resulting in a reduction in the Company's cost of removal component of its depreciation reserve, which will result in a reduction of the theoretical reserve imbalance identified in Commission Order No. PSC-10-0131-FOF-EI.

Petition for Intervention

By petition dated April 1, 2010, the Florida Industrial Power Users Group (FIPUG) filed a Petition to Intervene (Petition) in this docket. According to its Petition, FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. FIPUG further states that the cost of electricity constitutes a significant portion of its members' overall costs of production. FIPUG asserts that its members require adequate, reasonably priced electricity in order to compete with their respective markets. As such, FIPUG contends that the substantial interests of its members will be directly affected by the Commission's decisions in this docket due to the potential impact it may have on electric rates. No party has filed an objection to FIPUG's Petition, and the time for doing so has expired.

Standard for Intervention

Pursuant to Rule 25-22.039, 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 petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Rule 28-106.201(2), 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. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of

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sufficient immediacy to entitle him to a Section 120.57, F.S., hearing; and (2) that this 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. 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. 3rd 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).

Further, the test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico, 406 So. 2d 478. 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.

Analysis & Ruling

It appears that FIPUG meets the two-prong standing test in Agrico, 406 So. 2d at 482 as well as the three-prong associational standing test established in Florida Home Builders, 412 So. 2d 351. FIPUG asserts that it is an association consisting of industrial users some of whom are electric customers of PEF. According to FIPUG, these members’ substantial interests will be directly affected by the Commission’s decisions regarding PEF’s retail electric rates. FIPUG further states that this is the type of proceeding designed to protect its members’ interests. Therefore, FIPUG’s members meet the two-prong standing test of Agrico, 406 So. 2d at 482.

With respect to the first prong of the associational standing test, FIPUG asserts that its members are electric customers of PEF and that its members’ substantial interests will be directly affected by the Commission’s decision in this docket due to the impact that it may have on electric rates. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FIPUG’s general scope of interest and activity. FIPUG is an established association whose members are retail consumers of PEF. FIPUG contends that its members will be directly affected by the potential impact on electric rates resulting from PEF’s Petition. As for the third prong of the associational standing test, FIPUG is seeking intervention in this docket in order to represent the interests of its members in this proceeding. Based on the foregoing analysis, FIPUG’s standing in this docket has been established.

Because FIPUG meets the two-prong standing test established in Agrico, 406 So. 2d at 482, as well as the three-prong associational standing test established in Florida Home Builders, 412 So. 2d 351, FIPUG’s petition for intervention shall be granted. Pursuant to Rule 25-22.039, Florida Administrative Code, FIPUG takes the case as they find it.

Therefore, it is


ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Florida Industrial Power Users Group 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:

Jon C. Moyle, Jr.
Vicki Gordan Kaufman
Keefe Anchors Gordan & Moyle, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

John W. McWhirter, Jr.
P. O. Box 3350
Tampa, Florida 33601-3350

By ORDER of Commissioner David E. Klement, as Prehearing Officer, this 9th day of April, 2010.


DAVID E. KLEMENT
Commissioner and Prehearing Officer

(SEAL)

CMK

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.