

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc. | DOCKET NO. 100160-EG
| ORDER NO. PSC-10-0289-PCO-EG
| ISSUED: May 7, 2010

ORDER GRANTING INTERVENTION

On March 30, 2010, Progress Energy Florida, Inc. (PEF) filed its Petition for Approval of its Demand-Side Management (DSM) Plan.

Petition for Intervention

By petition dated April 5, 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 in their respective markets.

FIPUG states that in this docket, the Commission will review the DSM plan that PEF has submitted in response to Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG – 080413-EG. FIPUG further states that upon the Commission's approval, such DSM programs will be funded by Florida ratepayers, including FIPUG members. FIPUG was an intervenor in the prior docket where the Commission set conservation goals. Thus, FIPUG contends that the substantial interests of its members will be directly affected by the Commission's decisions in this docket. 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 days before the evidentiary 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 by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must satisfy 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 sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) that this substantial

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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. 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 satisfies 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. With respect to Agrico, 406 So. 2d at 482, it appears that FIPUG's members may suffer injury in fact of sufficient immediacy which entitles its members to participate in this proceeding, and this type of proceeding is designed to protect those members' interests.

With respect to the first prong of the Florida Home Builders, 412 So. 2d 351, associational standing test, FIPUG asserts that is an ad hoc association consisting of industrial users of electricity in Florida and that its members' substantial interests will be directly affected by the Commission's decision on the appropriate DSM programs. With respect to the second prong of the associational standing test, the subject matter of this docket appears to be within FIPUG's general scope of interest and activity. FIPUG contends that its members will be directly affected by the Commission's decision in this docket due to the impact on electric rates. 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. Based on the foregoing analysis, FIPUG's standing in this proceeding has been established.

Conclusion

Because FIPUG satisfies 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's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FIPUG takes the case as it finds it.

Based on the foregoing, it is

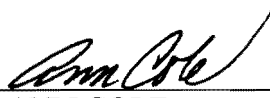
ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by the Florida Industrial Power Users Group is hereby granted as set forth herein. It is further

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 the Florida Public Service Commission this 7th day of May, 2010.



ANN COLE
Commission Clerk

(SEAL)

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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.