

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery
clause with generating performance incentive
factor.

DOCKET NO. 100001-EI
ORDER NO. PSC-10-0633-PCO-EI
ISSUED: October 25, 2010

ORDER GRANTING PETITION TO INTERVENE

Petition for Intervention

By petition, dated October 15, 2010, the City of Marianna (City) has requested permission to intervene in this proceeding. The City states that it is a retail customer of Florida Public Utilities Company (FPUC), whose fuel cost recovery charges are determined in this docket. The City asserts that it is the county seat of Jackson County and is home to 6,200 residents according to the 2004 census. The City contends it is also the home of Chipola College, five k-12 public schools, and the Marianna Municipal Airport. According to the City, it requires adequate, reasonably-priced electricity in order to conduct its government and provide for the safety and welfare of its citizens.

The City of Marianna further states it seeks to protect its interests in having the Commission determine the fair, just, and reasonable rates to be charged by FPUC, and in having the Commission take such other action to protect the interests of the City and of all customers served by FPUC as the Commission may deem appropriate. The City contends its interest will be directly affected by the Commission's decisions in this case and this is the type of proceeding designed to protect its interests. Accordingly, the City is entitled to intervene to protect its substantial interests. No party has filed an objection to the City of Marianna's petition, and the time for doing so has expired.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, conform with Rule 28-106.201(2), F.A.C., and 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 that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) 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).

Analysis & Ruling

Having reviewed the petition for intervention, it appears that the City of Marianna meets the two-prong standing test set forth in Agrico. The City is a direct retail customer of FPUC and its substantial interest will be affected by this proceeding. Further, this is the type of proceeding designed to protect the City's interests. There has been no response filed in opposition to this request. Because the City of Marianna satisfies the two-prong standing test established in Agrico, therefore, the petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., the City of Marianna takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by the City of Marianna is hereby granted as set forth in the body of this Order. 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:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301

Frank E. Bondurant, City Attorney
Bondurant and Fuqua, P.A.
4450 Lafayette Street
P.O. Box 1508
Marianna, Florida 32447

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 25th day of October, 2010.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

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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.