

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO. 100437-EI
ORDER NO. PSC-10-0746-PCO-EI
ISSUED: December 27, 2010

ORDER GRANTING INTERVENTION

In Order No. PSC-10-0632-PCO-EI, issued October 25, 2010, in Docket No. 100001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, the Commission established a docket separate from the fuel docket to review the actions at Progress Energy Florida, Inc.'s (PEF) Crystal River 3 nuclear plant (CR3) which have resulted in an extended outage and the need for PEF to purchase replacement power due to the outage. The Order states:

. . . the purpose of the docket will be to enable the Commission and all interested parties to review facts and information related to the Crystal River Unit 3 (CR3) steam generator replacement project and the subsequent delamination that was discovered during CR3's Refueling Outage 16. PEF asserts that in this new docket the Commission will be able to evaluate the prudence and reasonableness of PEF's actions concerning the delamination. The new docket will also provide the Commission with the ability to review the prudence of PEF's resulting fuel and purchase power replacement costs associated with the extended CR3 outage.

On November 10, 2010, the Public Service Commission staff filed a request with the Office of the Public Service Commission Clerk to establish Docket No. 100437-EI, In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc. On December 8, 2010, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS) filed a Petition to Intervene (Petition) in this docket.

Petition for Intervention

According to its Petition, PCS is a manufacturer of fertilizer products with plants and operations located within PEF's electric service territory, and as such, it receives service under various PEF rate schedules. PCS contends that in this docket, the Commission will evaluate the prudence of PEF's decisions and actions underlying the extended outage of the CR3 as well as the ramifications of the resulting fuel and purchase power replacement costs associated with the extended CR3 outage. The prudence determinations for these issues will substantially affect PCS Phosphate by directly impacting its cost of purchasing power, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. Also, PCS asserts that because of the implications of PEF's potentially imprudent actions and decisions concerning CR3 and its actions to procure replacement power in response to the extended CR3 outage, PCS Phosphate anticipates taking an active role in this proceeding.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 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 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).

Analysis & Ruling

It appears that PCS meets the two-prong standing test in Agrico. PCS is an industrial customer of PEF with plants and operations located within PEF's electric service territory, and its interests may be substantially affected by this proceeding. No objection to PCS' request for intervention has been filed, and the time for doing so has expired. Therefore, PCS' petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., PCS takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Petition to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs is hereby granted as set forth herein. It is further

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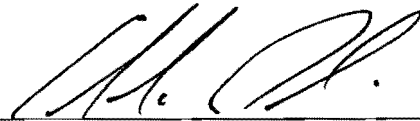
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ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this docket to:

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By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 27th day
of December, 2010.



EDUARDO E. BALBIS
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 25-22.060, 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.