

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 120009-EI
ORDER NO. PSC-12-0170-PCO-EI
ISSUED: April 2, 2012

ORDER GRANTING INTERVENTION

Petition for Intervention

By petition, dated February 7, 2012, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF states that it is an established association with more than 9,000 members in Florida, many of whom are retail customers of Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF), the two public utilities that collect money from their customers, through the Nuclear Cost Recovery Clause ("NCRC"), for nuclear power plants that these utilities have asserted they may build or operate. As such, FRF contends that the substantial interests of its members will be directly affected by the Commission's decisions in this proceeding regarding the amounts recovered under the NCRC. No party has filed an objection to FRF'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, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervener 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 intervener are subject to determination or will be affected through the proceeding.

To have standing, the intervener 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 intervener 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).

DOCUMENT NUMBER - DATE
01934 APR-2 09
FPSC-COMMISSION CLERK

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 FRF meets the two-prong standing test in Agrico, as well as the three-prong associational standing test established in Florida Home Builders. FRF asserts a substantial portion of the 9,000 members it represents are commercial or retail customers of either PEF or FPL. According to FRF, these members' substantial interests will be directly affected by the Commission's determination regarding what rates PEF and FPL may charge. FRF further states that this is the type of proceeding designed to protect its members' interests by allowing entities other than the original parties to advocate and argue that fair, just and reasonable rates are imposed. Therefore, FRF's members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, FRF asserts that many of its members are retail electric customers of either PEF or FPL and that those members' substantial interests will be directly affected by the Commission's decision on whether to grant a rate increase. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF's general scope of interest and activity. FRF is an established association whose members are retail consumers of PEF or FPL's and FRF further states that its members will be directly affected by the proposed rates. As for the third prong of the associational standing test, the Commission's determination of the amounts PEF or FPL may recover under the NCRC may affect the electric rates FRF's members must pay. As a result FRF is seeking in order to advocate for rates that are fair, just and reasonable for its members. Based on the foregoing analysis, FRF's standing in this docket has been established.

Because FRF meets the two-prong standing test established in Agrico, as well as the three-prong associational standing test established in Florida Home Builders, FRF's petition for intervention should be granted. Pursuant to Rule 25-22.039, F.A.C., FRF takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo Balbis, as Prehearing Officer, that the Petition to Intervene filed by Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that on behalf of the Florida Retail Federation 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 their attorney of record in this matter:

Robert Scheffel Wright and John T. LaVia, III
Gardner, Bist, Wiener, Wadsworth, Bowden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
schef@gbwlegal.com
850-385-0070 (office)

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 2nd day
of April, 2012.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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.