

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 140001-EI  
ORDER NO. PSC-14-0664-PCO-EI  
ISSUED: November 17, 2014

ORDER GRANTING FLORIDA POWER & LIGHT COMPANY'S MOTION TO DENY PARTICIPATION BY WHITE SPRINGS AGRICULTURAL CHEMICALS, INC. D/B/A PCS PHOSPHATE

By its Order Establishing Procedure, Order No. PSC-14-0084-PCO-EI (OEP), issued February 4, 2014, the Florida Public Service Commission (Commission) set hearing dates for October 22-24, 2014, to consider the fuel and generating performance incentive factors (Fuel Clause) for Florida's investor-owned electric utilities. On June 25, 2014, Florida Power & Light Company (FPL) filed a petition (Petition) in the Fuel Clause seeking approval of a natural gas reserve project (Gas Reserve Issues). On August 1, 2014, FPL and the Office of Public Counsel (OPC) filed a joint motion to modify the OEP's schedule for discovery, prefiled testimony, and briefs so that the Gas Reserve Issues raised in FPL's Petition could be heard at the hearing on October 22-24, 2014, and a vote be taken before the end of the calendar year.<sup>1</sup> By Order No. PSC-14-0439-PCO-EI, issued August 22, 2014, the Gas Reserve Issues in FPL's Petition were deferred and a separate schedule was set for discovery, prehearing statements, post hearing briefs, as well as a separate prehearing conference (Deferred Proceeding). The Prehearing Conference for the Deferred Proceeding was held on November 6, 2014, and the hearing is scheduled for December 1<sup>st</sup> and 2<sup>nd</sup>, 2014.

On October 27, 2014, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate (PCS), filed a prehearing statement in the Deferred Proceeding. In its prehearing statement, PCS stated that FPL's Petition raised issues "which will affect the Commission's consideration of gas reserves for electric utilities going forward" and that "all Florida consumers will be affected by the Commission's resolution of those issues." On November 3, 2014, FPL filed a Motion to Deny the Participation of PCS in the Deferred Proceeding for Lack of Standing, and a Motion to Strike PCS's Prehearing Statement (FPL Motion). PCS responded in opposition to the FPL Motion on November 5, 2014 (PCS Response). In accordance with the Prehearing Officer's request, the parties engaged in oral argument on FPL's Motion and PCS's Response at the November 6, 2014, Prehearing Conference. This Order addresses the FPL Motion and PCS Response, pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C).

FPL's Argument

In the FPL Motion, FPL contends that PCS, though a party to the Fuel Clause proceedings, lacks standing to participate in the separate proceedings addressing FPL's Petition.

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<sup>1</sup> The hearing on the fuel clause issues, except the FPL deferred issues, was held on October 22, 2014.

FPL asserts that PCS is not a customer of FPL, is not substantially affected by a resolution of the issues raised in FPL's Petition, and thus will not suffer any injury in fact as a result.

FPL further argues that the definition of a "party" in Section 120.52(13), Florida Statutes (F.S.), supports the FPL Motion, which provides that "parties" are "specifically named persons whose substantial interests are being determined in the proceeding." FPL argues that although PCS is a party to the Fuel Clause, it is not a party to the Deferred Proceeding. PCS has standing in the Fuel Clause proceedings solely as a customer of Duke Energy Florida, Inc. (DEF), and the mere fact that PCS is a party to the Fuel Clause does not establish PCS's standing for the Deferred Proceeding on FPL's Petition. FPL also argues PCS fails to meet the two-pronged test for standing established by Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2<sup>nd</sup> DCA 1981) (Agrico), in that PCS fails to identify any immediate harm or injury to justify standing. As such, there can be no injury to PCS because PCS is, admittedly, not an FPL customer. FPL further states that potential adverse legal precedent does not constitute a substantial interest for purposes of intervention.

If the FPL Motion is granted, FPL requests that its Motion to Strike PCS's Prehearing Statement also be granted.

#### PCS's Response

In the PCS Response, PCS argues that although it is not a customer of FPL, PCS has standing in these proceedings by virtue of its party status in the Fuel Clause. PCS further asserts that it should retain party status as the issues involve "landmark energy and regulatory policy issues that concern all Florida consumers."

In support of its argument, PCS argues that the Commission has already determined that PCS meets the substantial interest requirement to appear as a party in the Fuel Clause proceedings in Order No. PSC-08-0233-PCO-EI, issued April 8, 2008, in Docket 080001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor. According to PCS, the 2008 order does not limit PCS's participation to DEF-specific issues. PCS further asserts that the OEP for the Deferred Proceeding mandates that all parties file prehearing statements. PCS contends that it does not have to demonstrate its substantial interest in any particular issue to maintain standing on the Gas Reserve Issues in the Deferred Proceeding.

#### Analysis

In order to have standing, PCS must first meet the two-prong Agrico standing test. PCS must show that 1) it will suffer an injury in fact which is of sufficient immediacy to entitle it 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 "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. 3d 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), [\*9] rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote). PCS, admittedly, is not a customer of FPL; thus, it cannot show that it will suffer injury in fact because its rates will not be affected by the Commission's decision on the Gas Reserve Issues in the Deferred Proceeding. PCS's concern that the Commission's ruling on FPL's Gas Reserve Issues will affect other utilities and apply to all the citizens of Florida is too speculative to confer standing under the Agrico test. Additionally, PCS has not demonstrated that it represents the interests of other utilities or all the citizens of Florida. Commission orders, while having precedential value, are not statements of general applicability such that would confer standing upon PCS at this juncture. This would be a departure from Commission practice, which could potentially lead to unintended consequences.

The Fuel Clause docket is a consolidated proceeding for efficiency reasons, which addresses generic issues and utility-specific issues. PCS's retained party status in the docket is based upon the 2008 order in which it was granted intervention. By Order No. PSC-08-0233-PCO-EI, the Prehearing Officer acknowledged that PCS would be substantially affected because it was a Progress Energy Florida (PEF), now DEF, customer, as further provided:

[PCS] White Springs...is a manufacturer located within the service territory of Progress Energy Florida, Inc. (PEF), and receives electric service from the utility. White Springs alleges that the relief requested in PEF's petition to revise its fuel adjustment charges, effective January 1, 2009, will substantially affect White Springs by increasing its cost of purchasing power, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. White Springs asserts that the Commission, in Order No. PSC-06-0824-PCO-EI, issued October 6, 2006, in Docket No. 060001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, recognized White Springs as having a substantial interest in the fuel proceeding, and therefore granted White Springs's petition to intervene. . . . White Springs contends that because of the implications of PEF's current fuel cost recovery proposal, White Springs anticipates taking an active role in this fuel proceeding. White Springs concludes it will be a substantially affected party by any action the Commission takes in this docket.

Although no specific limitation was placed on PCS's intervention, it is clear that the basis for making PCS a party to the Fuel Clause proceeding was that PCS was a PEF customer. Historically, PCS has taken "no position" on all FPL-specific issues, and PCS has not cross-examined any FPL witness regarding FPL-specific issues in the Fuel Clause. Any attempt to do so would have likely drawn a sustained objection by FPL, because PCS is not a FPL customer. By its very nature, the Fuel Clause proceedings create a process where differently-situated utilities participate, and customers of only one utility may participate. The participation of individual utilities and their customers does not necessarily mean that they have standing to challenge utility-specific issues of other companies. Standing is not conferred through process; rather, standing is conferred by a showing that one will suffer an injury in fact which is of sufficient immediacy to entitle it to a Section 120.57, F.S., hearing, and that this substantial injury is of a type or nature which the proceeding is designed to protect, as Agrico dictates.

Accordingly, FPL's Motion to Deny the Participation of PCS in the Deferred Proceeding for Lack of Standing is granted. As such, FPL's motion to strike PCS's prehearing statement is also granted.

Based on the foregoing, it is hereby

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's Motion to Deny Participation by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate and to Strike the Prehearing Statement of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate is granted, as set forth herein.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 17th day of November, 2014.



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

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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

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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.