

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination that the Osprey Plant acquisition or, alternatively, the Suwannee Simple Cycle Project is the most cost effective generation alternative to meet remaining need prior to 2018, by Duke Energy Florida, Inc.

DOCKET NO. 150043-EI
ORDER NO. PSC-15-0120-PCO-EI
ISSUED: March 6, 2015

ORDER GRANTING PETITION TO INTERVENE

On January 30, 2015, Duke Energy Florida, Inc. (“DEF” or “Company”) petitioned the Florida Public Service Commission (“Commission”) for a determination that the Calpine Construction Finance Company, L.P. (“Calpine”) Osprey Plant acquisition is the most cost-effective generation to meet its need for additional generation capacity prior to 2018. DEF has executed an Asset Purchase and Sale Agreement with Osprey Energy Center, LLC (“Osprey LLC”), as the assignee of Calpine. In the alternative, if DEF cannot purchase the Osprey Plant, DEF asks for a determination that construction of its Suwannee Simple Cycle Project is the most cost effective generation to meet the Company’s stated need.

Petition for Intervention

By petition dated February 24, 2015 (Petition), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Spring (PCS Phosphate) requested permission to intervene in this proceeding. According to its Petition, PCS Phosphate is a manufacturer of fertilizer products with plants and operations located within DEF’s electric service territory, and as such, it receives service under various DEF rate schedules. PCS Phosphate contends that as a large customer of DEF, it may be required to fund the costs of the proposed acquisition of the Osprey Plant or the construction of the Suwannee Simple Cycle project. Therefore, PCS Phosphate submits that it will be directly and substantially affected by the outcome of this proceeding. No party has filed an objection to PCS Phosphate’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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 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 through the proceeding....

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) the 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 Phosphate meets the two-prong standing test in Agrico, 406 So. 2d 482. PCS Phosphate demonstrates that its substantial interests are of sufficient immediacy to entitle it to participate in this proceeding and are the types of interests this proceeding is designed to protect. PCS Phosphate is a manufacturer of fertilizer products with plants and operations located in DEF’s electric service territory, is a signatory to the 2013 stipulation and settlement agreement with DEF for which this Petition arises, and as a large customer of DEF, is directly and substantially affected by the outcome of these proceedings which will address electric system reliability, integrity, and costs. Therefore, PCS Phosphate has demonstrated that it meets the two-prong standing test of Agrico, and accordingly, PCS Phosphate’s Petition for intervention shall be granted as set forth herein. Pursuant to Rule 25-22.039, F.A.C., PCS Phosphate takes the case as it finds it.

Based on the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, 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 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:

ORDER NO. PSC-15-0120-PCO-EI

DOCKET NO. 150043-EI

PAGE 3

James W. Brew
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
8th Floor, West Tower
Washington DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
jbrew@bbrslaw.com

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 6th day
of March, 2015.



JULIE I. BROWN
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.

CWM

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.