

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO.: 160021-EI

FILED: August 1, 2016

**PETITIONERS REPLY TO FPL's RESPONSE IN
OPPOSITION TO LARSONS' PETITION TO INTERVENE**

Pursuant to sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Mr. Daniel R. Larson and Mrs. Alexandria Larson (“Petitioners”), by and through undersigned counsel, hereby file Petitioners Reply to FPL’s Response in Opposition to Larsons’ Petition to Intervene in the above captioned docket. In support thereof, the petitioners state as follows:

1. Pursuant to Sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Mr. Daniel R. Larson and Mrs. Alexandria Larson (“Petitioners”), by and through undersigned counsel, timely filed their Petition to Intervene in the above captioned docket on July 22, 2016.
2. The Petition to Intervene filed by Petitioners in the above captioned docket was legally sufficient on face to grant intervention. Petitioners clearly meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981) as Petitioners are residential electric customers of Florida Power & Light Company (“FPL”) whose interests are substantially affected by this proceeding as set forth within the Petition to Intervene.
3. The Florida Public Service Commission (“Commission” or “FPSC”) has routinely granted Petitioners prior requests to intervene in past dockets which affected their substantial interests, including granting Petitioners intervention in the last FPL rate case.

See. FPSC Order No. PSC-12-0221-PCO-EI, issued April 26, 2012 (granting Petition for Intervention). Moreover, the FPSC Order expressly stated:

“this Commission has a long history of granting intervention to residential customers of utilities subject to its regulation.¹ I further note that the fact that OPC is charged with representing the interests of the citizens of this state pursuant to Chapter 350, F.S., does not in any way abrogate or curtail the rights of a substantially affected individual to participate in a proceeding before this Commission”.²

A true and correct copy of FPSC Order No. PSC-12-0221-PCO-EI is attached herein as Exhibit A for Commission reference.

4. On July 29, 2016, FPL filed its Response in Opposition to the Petitioners Petition to Intervene. FPL did not dispute the fact that Petitioners meet the legal standing test set forth in Agrico³, but instead set forth the same superfluous arguments that the Commission had previously rejected in granting Petitioners intervention the prior FPL

¹ For example, *see* Order No. PSC-11-0148-PCO-EU, Issued March 3, 2011, in Docket No. 110018-EU, In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery (granting Larsons intervention based on standing as residential customers); Order No. PSC-10-0137-PCO-EM, Issued March 8, 2010, in Docket No. 090451-EM, In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC. (granting intervention to residential customer of electric utility); Order No. PSC-01-1121-PCO-WU, Issued May 16, 2001, in Docket No. 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (granting intervention to residential customer based on possibility of higher rates); contrast with Order No. PSC-08-0398-PCO-EI, Issued June 17, 2008, in Docket No. 080246-EI, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company (denying intervention to individual who was not a customer of utility); Order No. PSC-05-0301-PCO-WU, Issued March 18, 2005, in Docket No. 050018-WU, In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes (denying intervention to former customer of utility).

² FPSC Order No. PSC-12-0221-PCO-EI at 2-3.

³ Agrico, 406 So.2d 478 (Fla. 2nd DCA 1981).

rate case.⁴ FPL counsel had an ethical obligation to disclose prior adverse precedent to this Commission, but notably failed to identify this prior adverse precedent in the FPL response.

5. No party other than FPL in the above captioned docket has opposed the Petition to Intervene filed by Petitioners.
6. Contrary to the erroneous FPL assertion which wrongfully seeks to add a meaningful participation requirement to the well-settled statutory requirements for granting intervention (without citing any authority whatsoever). As is their legal right, Petitioners fully intend to meaningfully participate in the above captioned docket including, but not limited to, filing a pre-hearing statement, attending the pre-hearing conference, participating in any settlement discussions, cross examining FPL witnesses, and filing a post-hearing brief. Petitioners further note that the discovery cut-off date has not yet passed.
7. As the Commission has correctly noted, “the fact that OPC is charged with representing the interests of the citizens of this state pursuant to Chapter 350, F.S., does not in any way abrogate or curtail the rights of a substantially affected individual to participate in a proceeding before this Commission”.⁵ Accordingly, the FPL arguments are moot and have no legal basis. Petitioners further notes that their substantial interests are not adequately represented or protected by the Office of Public Counsel (OPC) or AARP in the above captioned docket. Specifically, the global representation all customers by OPC cannot avoid inherent conflicts (e.g., cross subsidization issues) between the substantial interests of Petitioners who are residential customers and business customers who are

⁴ FPSC Order No. PSC-12-0221-PCO-EI.

⁵ Id. at 2-3.

equally represented by OPC. Moreover, AARP does not represent the Petitioners in the above captioned docket.

8. The FPL suggestion that Petitioners are seemingly barred from exercising their statutory right to intervene in the above captioned docket, ostensibly by virtue of merely participating in a quality of service hearing, is without completely merit and not supported by Florida law.
9. No other party in the above captioned docket has opposed the Petition to Intervene filed by Petitioners.
10. Petitioners respectfully assert that the failure of the Commission to timely grant intervention to Petitioners in the above captioned docket would otherwise constitute reversible error.

WHEREFORE, Petitioners respectfully request the Commission to immediately enter an order granting the Petition to Intervene in the above captioned docket.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the parties of record and interested parties indicated below via electronic mail on August 1, 2016:

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EXHIBIT A

FPSC Order No. PSC-12-0221-PCO-EI.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida
Power & Light Company.

DOCKET NO. 120015-EI
ORDER NO. PSC-12-0221-PCO-EI
ISSUED: April 26, 2012

ORDER GRANTING PETITION FOR INTERVENTION

Background

On January 17, 2012, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2012 for an increase in rates effective January, 2013. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., FPL filed the petition for an increase in rates on March 19, 2012. The hearing is scheduled to commence on August 20, 2012.

Petition to Intervene

On April 13, 2012, Mr. Daniel R. Larson and Mrs. Alexandria Larson (the Larsons), filed a Joint Petition to Intervene (Petition) in this docket in their individual capacity as customers of FPL. The Larsons assert they are residential customers of FPL, and their electric bill is a significant portion of their monthly household expense. They further assert they have a substantial interest in this proceeding, as approval of FPL's Petition for Increased Rates will increase their electric rates. The Larsons state that, as the purpose of this proceeding is to evaluate the FPL request to increase customer rates, this proceeding directly coincides with their substantial interests to ensure that FPL rates are fair, just, and reasonable.

Response in Opposition

On April 20, 2012, FPL timely filed a Response in Opposition (Response) to the Larson's Petition to Intervene. In its Response, FPL asserts that, generally speaking, the interests of residential customers are already represented by the Office of Public Counsel (OPC). FPL states that the Larsons allege no particular interest in this proceeding different from that of other retail customers, and provide no explanation or support that their rights and interests cannot be adequately represented by OPC. FPL maintains that the Commission should "scrutinize the potential for the escalation of costs and rate case expense and the unnecessary utilization of Commission time and resources for participation by individual customers whose interests are already comprehensively represented by OPC."

After stating that "FPL strongly supports the right of customers to participate in the rate case process, ..." FPL suggests that formal participation as a party is not necessary, since individual customer participation is "better suited to the first phase of the proceeding, consisting of quality of service hearings around the state." FPL concludes that "the Larsons can more than

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adequately participate through providing testimony at a service hearing and allowing OPC to represent their interests at the technical hearing.”

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, 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 by the proceeding. Intervenors take the case as they find it.

To have standing, intervenors must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Intervenors must show that (1) they will suffer injury in fact which is of sufficient immediacy to entitle them to a Section 120.57 hearing, and (2) 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. 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), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

It appears that the Larsons meet the two-prong standing test set forth in Agrico, in that they are customers of FPL whose interests may be substantially affected by this proceeding. I note that this Commission has a long history of granting intervention to residential customers of utilities subject to its regulation.¹ I further note that the fact that OPC is charged with

¹ For example, see Order No. PSC-11-0148-PCO-EU, Issued March 3, 2011, in Docket No. 110018-EU, In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery (granting Larsons intervention based on standing as residential customers); Order No. PSC-10-0137-PCO-EM, Issued March 8, 2010, in Docket No. 090451-EM, In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC. (granting intervention to residential customer of electric utility); Order No. PSC-01-1121-PCO-WU, Issued May 16, 2001, in Docket No. 010503-WU, In re: Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc. (granting intervention to residential customer based on possibility of higher rates); contrast with Order No. PSC-08-0398-PCO-EI, Issued June 17, 2008, in Docket No. 080246-EI, In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company (denying intervention to individual who was not a customer of utility); Order No. PSC-05-0301-PCO-WU, Issued March 18, 2005, in Docket No. 050018-WU, In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the

representing the interests of the citizens of this state pursuant to Chapter 350, F.S., does not in any way abrogate or curtail the rights of a substantially affected individual to participate in a proceeding before this Commission. Since I do not find the Larson's failure to specifically allege which of their specific interests OPC may not represent fatal to their Petition, the Larson's Petition for Intervention is granted.

Pursuant to Rule 25-22.039, F.A.C., the Larsons take the case as they find it. The decision to grant the Larsons intervention should not be construed to permit them to raise arguments outside the scope of the issues the Commission determines to address in this rate proceeding. The appropriateness of the issues will be determined during the normal course of issue identification. As intervenors in this proceeding, the Larsons are expected to comply with the same standards, rules, statutes, and procedures as all other parties to this proceeding, and shall be required to stay within the scope of this proceeding as established through the issues, rules, and governing statutes.

Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that the Petition to Intervene filed by Mr. Daniel R. Larson and Mrs. Alexandria Larson is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Larsons take this case as they find it. 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:

Mr. and Mrs. Daniel R. Larson
16933 W. Harlena Drive
Loxahatchee, Florida 33470
Telephone: (561) 791-0875
Email: danlarson@bellsouth.net

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 26th day of
April, 2012.



ART GRAHAM
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
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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.

LDH

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.