

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 160186-EI

In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.

DOCKET NO. 160170-EI
ORDER NO. PSC-17-0035-PCO-EI
ISSUED: January 26, 2017

ORDER GRANTING INTERVENTION
TO SIERRA CLUB

Pursuant to Rule 25-6.140, Florida Administrative Code (F.A.C.), on August 12, 2016, Gulf Power Company (Gulf) filed a test year letter notifying this Commission of its intent to file a petition between October 11 and October 28, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., Gulf filed its Minimum Filing Requirements and testimony on October 12, 2016. The hearing on Gulf's rate case is scheduled for March 20 through March 24, 2017.

Petition for Intervention

On December 16, 2016, Sierra Club filed a Petition for Intervention (Petition), requesting permission to intervene in this proceeding. Sierra Club is a national non-profit organization having 30,000 members who reside in Florida, many in Gulf's service area, and whose goal is reducing pollution through equitable public health and environmental safeguards, and through the rapid transition away from fossil fuel burning generation. Sierra Club asserts that its interests are of the type that this proceeding is designed to protect since this proceeding is to evaluate Gulf's request for a rate increase that seeks to recover the costs of the proposed purchase of Georgia coal-burning generation and related expenses. Sierra Club contends that the purpose of the hearing corresponds with Sierra Club's substantial interests: to transition electric utilities away from burning fossil fuels and toward low cost, low risk clean energy alternatives. Sierra Club asserts that a substantial number of its Florida members are customers of Gulf and directly affected by the rates that will be established in this proceeding. Sierra Club also asserts that it has contacted all the parties to this proceeding and none oppose its intervention. No party has filed an objection to Sierra Club's petition, and the time for doing so has expired.

Standards for Intervention

Rule 25-22.039, F.A.C., provides:

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. Intervenors take the case as they find it.

To have standing in an administrative proceeding, an 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 prong of the test addresses the degree of injury. The second addresses 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); 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).

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 Sierra Club meets the two-prong standing test in Agrico, as well as the three-prong associational standing test established in Florida Home Builders. The purpose of this proceeding is to determine the fair, just and reasonable electric rates to be charged by Gulf. The substantial interests of Sierra Club’s members are affected by this proceeding, since increases in the cost of electricity directly affect their monthly electric bills. Therefore, Sierra Club’s members meet the two-prong standing test of Agrico.

Regarding the first prong of the associational standing test, to have standing in an administrative proceeding, an association must demonstrate that a substantial number of its members are substantially affected by the proceeding. Florida Home Builders, 412 So. 2d at 353. Under Florida law, neither a specific number, nor percentage of association members, is required for standing. Hillsborough County v. Florida Restaurant Ass'n, Inc., 603 So. 2d 587, 589 (Fla. 2nd DCA 1992)(court found standing where 37 of 2,766 members were affected, because a substantial number of the members residing in the county at issue were affected). Here, Sierra Club asserts that some of its members are located in Gulf's service area and receive electric service from Gulf. Thus, Sierra Club's members will be substantially affected by this Commission's decision in this rate proceeding. Specifically, Sierra Club asserts that "the Commission's decision may substantially affect the value of Gulf's service to [Sierra Club's] members as the decision will guide if not bind Gulf's selection of service offerings going forward, including whether to pursue, improve, or abandon certain activities and certain generation,"¹ including conservation rates, measures, and programs. The Commission has recognized Sierra Club's standing in other proceedings in which Gulf was a party and there was no opposition by Gulf.² Thus, I find that Sierra Club meets the first prong of the associational standing test.

With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within Sierra Club's general scope of interest and activity. Here, Gulf is requesting a change in its rates and rate structure that could have an impact on conservation rates, measures, and programs, as well as, proposing new demand side management programs. Sierra Club is an association organized with the purpose of advocating for the use of clean energy alternatives to the fossil fuel generation for which recovery is sought in this rate case. As stated in its petition, "Sierra Club is interested and active in advocating for a rapid transition away from fossil fuel-burning generation, toward low cost, low risk clean energy alternatives."³ If approved, Gulf's rates and rate structure will impact all customers, including those (like Sierra Club members) that employ energy alternatives and/or conservation measures. In addition, pursuant to Order No. PSC-16-0535-FOF-EI⁴ in the Environmental Cost Recovery Clause docket, issues related to Gulf's recovery of its identified environmental compliance investment and expenses associated with Gulf's 25 percent ownership interest in Scherer Unit 3 were carved out and deferred for resolution in the rate case proceeding. Thus, I find that Sierra Club meets the second prong of the associational standing test.

As for the third prong, Sierra Club seeks intervention in this docket to represent the interests of its members before the Commission in this proceeding. A trade or professional

¹ Document No. 09385-16, filed December 16, 2016, in Docket No. 160186-EI, In re: Petition for rate increase by Gulf Power Company, p. 3.

² Order No. PSC-14-0097-PCO-EU, issued February 7, 2014, in Docket No. 130202-EI, In re: Commission review of numeric conservation goals (Gulf Power Company).

³ Document No. 09385-16, filed December 16, 2016, in Docket No. 160186-EI, In re: Petition for rate increase by Gulf Power Company, p. 4.

⁴ Order No. PSC-16-0535-FOF-EI, issued November 22, 2016, in Docket No. 160007-EI, In re: Environmental cost recovery clause.

association has standing to participate in an administrative proceeding, even though it is acting solely as the representative of its members. Florida Home Builders, 412 So. 2d at 353. As stated above, Sierra Club's members will be substantially affected by this Commission's determination in this proceeding and the Commission has recognized Sierra Club's standing in other proceedings that affected Sierra Club's members. Finally, the Commission has granted intervention to environmental groups in electric rate case proceedings.⁵ Thus, I find the relief requested by Sierra Club is of a type appropriate for an association to obtain on behalf of its members.

Finding that Sierra Club meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, Sierra Club's petition for intervention shall be granted. Pursuant to Chapter 120, F.S., Sierra Club may offer testimony and provide evidence as to whether the rates, rate-structure, and charges proposed by Gulf are fair, just and reasonable. Notwithstanding the granting of intervention, however, I remind Sierra Club that issues shall be limited to those appropriate to the scope of an electric rate case proceeding. While issue development is an ongoing process, all issues and testimony should be germane to this rate case proceeding. Disagreement as to the inclusion, scope or wording of particular issues will ultimately be resolved at the Prehearing Conference.

Pursuant to Rule 25-22.039, F.A.C., Sierra Club takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Jimmy Patronis, as Prehearing Officer, that the Petition to Intervene filed by Sierra Club is hereby granted as set forth in the body of this Order. It is further

ORDERED that the issues and testimony shall be limited to those appropriate in scope and germane to an electric rate case proceeding. 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:

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Sierra Club
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⁵ Order No. PSC-16-0299-PCO-EI, issued July 27, 2016, in Docket No. 1600021-EI, In Re: Petition for rate increase by Florida Power & Light Company.

By ORDER of Commissioner Jimmy Patronis, as Prehearing Officer, this 26th day
of January, 2017.


JIMMY PATRONIS
Commissioner and Prehearing Officer
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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 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.