

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI
ORDER NO. PSC-08-0444-PCO-EI
ISSUED: July 11, 2008

ORDER GRANTING INTERVENTION

On February 29, 2008, Progress Energy Florida, Inc. (PEF) filed a petition to seek a prudence review of and to recover certain costs associated with construction of the Crystal River Unit 3 "Uprate" (CR3 Uprate) pursuant to Rule 25-6.0423, Florida Administrative Code (F.A.C.), and Section 366.93, Florida Statutes (F.S.). PEF filed its petition in the Nuclear Cost Recovery Clause (NCRC) docket. This is the first year of this newly established roll-over docket.

Petition for Intervention

By petition dated June 10, 2008, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate – White Springs (PCS) filed a Petition to Intervene (Petition) in this docket. According to its Petition, PCS is a manufacturer of fertilizer products with plants and operations located within PEF's electric service territory, and as such, it receives service under various PEF rate schedules. PCS contends that PEF's petition for nuclear cost recovery for certain site preparation and pre-construction costs associated with the CR3 Uprate, if approved, will substantially affect PCS by directly increasing its cost of purchasing power, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. Moreover, PCS argues that material changes in the cost and schedule of the proposed nuclear units could dramatically affect the cost-effectiveness of the units and consumer rate impacts.

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, must conform with Rule 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 by the proceeding. Intervenors take the case as they find it.

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 (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

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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 meets the two-prong standing test in Agrico. PCS is an industrial customer of PEF with plants and operations located within PEF's electric service territory, and its interests may be substantially affected by this proceeding. No objection to PCS' request for intervention has been filed, and the time for doing so has expired. Therefore, PCS' petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., PCS takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, 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 herein. 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 docket to:

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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 11th day of July, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., 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 25-22.060, 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.