

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of underground conversion tariff revisions, by Florida Power & Light Company.

DOCKET NO. 080244-EI
ORDER NO. PSC-08-0460-PCO-EI
ISSUED: July 17, 2008

ORDER GRANTING MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM'S
PETITION TO INTERVENE

On April 30, 2008, Florida Power & Light Company (FPL) filed a petition, requesting approval of its Third Revised Tariff Sheet 6.300, Third Revised Tariff Sheet 9.720, Original Tariff Sheet 9.721 and Original Tariff Sheet 9.722, in order to implement the requirement of Rule 25-6.115(11)(a), Florida Administrative Code (F.A.C.), that FPL "include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities" in determining the Contribution in Aid of Construction (CIAC) to be paid by applicants for conversion from overhead to underground distribution facilities.

Petition for Intervention

By petition, dated May 28, 2008, the Municipal Underground Utilities Consortium (MUUC) filed its Petition to Intervene (Petition) in this docket relating to FPL's proposed revisions to its tariffs governing conversions of overhead (OH) facilities to underground (UG) facilities. MUUC's membership includes more than 30 political subdivisions (e.g., cities and towns) of the State of Florida. The majority of these cities and towns are retail customers of FPL, which are in the process of working on or planning UG conversion projects subject to these tariffs.

In its Petition, MUUC states that its members have ongoing interests in converting the existing OH electric distribution lines in their jurisdictions to UG services; the conversion from OH to UG is governed extensively by the tariff sheets which FPL proposes to amend in this docket; the majority of MUUC's members qualify as "Local Government Applicants" within the scope of these tariffs; and the interests of MUUC's members will be directly affected by the Commission's decision regarding FPL's proposed tariff amendments. Its Petition alleges seven issues of material fact which MUUC contends will be decided in this proceeding. Accordingly, MUUC asserts that it is entitled to intervene in this docket in order to protect its members' interests.

FPL's Response

In its timely response, dated June 4, 2008, FPL does not object to MUUC's intervention in this docket. However, pursuant to Rule 25-22.039, F.A.C., FPL asserts MUUC must take this

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proceeding as it finds it, and that MUUC's Issue 3¹ and Issue 5² are inconsistent with this requirement and, if included, will expand the proceeding beyond its proper scope. Accordingly, if MUUC is allowed to intervene, FPL asserts that MUUC should not be permitted to pursue those issues here.

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.

In order to establish standing, the intervenor must satisfy the two-prong standing test in Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) his substantial injury is of a type or nature which the proceeding is designed to protect. See id. The first aspect of the test deals with the degree of injury; the second deals with the nature of the injury. See id. The intervenor's "injury in fact" must be both real and immediate, not speculative, conjectural, or hypothetical. See Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 433-34 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987).

Further, the test for associational standing was established in Florida Home Builders v. Dep't of Labor & Employment Sec., 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Org., Inc. v. Dep't of Health & Rehab. Serv., 417 So. 2d 753 (Fla. 1st DCA 1982). Incorporating the basic principles of standing established by Agrico and its progeny, 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. See id.

Analysis & Ruling

Having reviewed the Petition, it appears that MUUC has established standing to intervene on behalf of its members' whose interests may be substantially affected by this proceeding. Additionally, FPL concedes MUUC may intervene. Therefore, this Petition shall be granted.

¹ Issue 3: Will FPL's proposed Avoided Storm Restoration Costs (ASRC) credits provide appropriate incentives to municipalities to undertake OH-to-UG conversion projects?

² Issue 5: Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?

Regarding the issues of material fact raised by MUUC to which FPL objects, it should be noted that MUUC's intervention shall be limited to issues directly relevant to the tariffs that are the subject of this docket and, if necessary, a decision on the relevant issues will be made at a later date. Pursuant to Rule 25-22.039, F.A.C., MUUC takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by Municipal Underground Utilities Consortium is hereby granted with the limitations discussed above. 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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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 17th day of July, 2008.



NATHAN A. SKOP
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), 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 25-22.060, 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.