

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress
Energy Florida, Inc.

DOCKET NO. 090079-EI
ORDER NO. PSC-09-0399-PCO-EI
ISSUED: June 2, 2009

ORDER GRANTING INTERVENTION

On February 12, 2009, Progress Energy Florida, Inc. (PEF) 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 2009 for a general rate increase effective January 1, 2010. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., PEF filed a petition for an increase in rates on March 20, 2009.

Petition for Intervention

By petition dated May 11, 2009, the Department of the Navy filed a Petition to Intervene (Petition) in this docket on behalf of the Navy. According to its Petition, the Department of the Navy maintains a military installation within PEF's electric service territory. The Department of the Navy contends that PEF's petition for a general rate increase may affect the rates it pays for electrical services. As such, the Department of the Navy substantial interests will be directly affected by the Commission's decisions in this proceeding.

In a response dated May 26, 2009, PEF acknowledged that the Department of the Navy is a PEF customer and thus meets the standing test set forth in Rules 28-106.205 and 28-106.201(2), F.A.C. No party has filed an objection to the Department of the Navy'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 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 the Department of the Navy meets the two-prong standing test in Agrico, 406 So. 2d at 482. The Department of the Navy is a customer of PEF with operations located within PEF's electric service territory, and its interests may be substantially affected by this proceeding. Therefore, its Petition shall be granted as set forth herein. Issue development is an ongoing process; while issues should be germane to this proceeding, disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference. Pursuant to Rule 25-22.039, F.A.C., the Department of the Navy takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by the Department of the Navy 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 docket, to:

Kay Davoodi
Naval Facilities Engineering Command
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Litigation Headquarters
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Washington Navy Yard, DC 20374-5065
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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 2nd day of June, 2009.



NATHAN A. SKOP

Commissioner and Prehearing Officer

(S E A L)

KEF/sw

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.