

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 080677-EI

In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.

DOCKET NO. 090130-EI

ORDER NO. PSC-09-0525-PCO-EI

ISSUED: July 29, 2009

ORDER GRANTING PETITION TO INTERVENE

On November 17, 2008, 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 2009 for an increase in rates 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., FPL filed the petition for an increase in rates on March 18, 2009.

Petition for Intervention

By petition dated July 16, 2009, the Associated Industries of Florida (AIF) requested permission to intervene in this proceeding. AIF states that it is a non-profit corporation that represents the interests of thousands of corporations, professional associations, partnerships and proprietorships. AIF asserts that it represents its members in critical matters before the Florida legislature, Florida's executive branch, regulatory agencies and the State Courts of Florida. According to AIF, its mission is to represent the business community before elected and appointed officials of state government on those issues of interest to the business community. Additionally, AIF claims that many of its members are retail customers of FPL.

AIF states that its members require adequate, reasonably priced electricity in order to conduct their businesses consistently with the needs of their customers. AIF asserts that construction and operation of the improved facilities proposed by FPL, as well as FPL's continued provision of reliable, affordable electric service, will provide essential support that AIF's members need to maintain and expand their own businesses, which employ thousands of Florida residents. AIF states that the Commission's decision in this case will have a real and immediate impact on the amounts paid by AIF members for electricity and the quality and quantity of electric service available for AIF members. No party has filed an objection to AIF's petition, and the time for doing so has expired.

Standards 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 (5) days before the final hearing, conform with Rule 28-106.201(2), F.A.C., and include allegations

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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, 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 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) 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. 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).

Further, 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 AIF meets the two-prong standing test in Agrico. AIF asserts that some of its members are retail customers of FPL, whose substantial interests will be affected by this Commission’s decision whether to increase FPL’s rates. AIF further states that this is the type of proceeding designed to protect its members’ interests. Therefore, AIF’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, AIF states that a substantial number of its members are located in FPL’s service area and receive their electric service from FPL. As to the second prong of the associational standing test, AIF asserts that it exists to represent its members’ interests in a number of venues, including the Florida Public Service Commission, thus the subject matter of this proceeding is within AIF’s general scope of interest and activity. As to the third prong of the associational standing test, AIF claims the relief requested, intervention and approval of the base rate increase consistent with governing law, is relief that will apply to all of AIF’s members.

Because AIF meets the two-prong standing test established in Agrico, as well as the three-prong associational standing test established in Florida Home Builders, AIF's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., AIF takes the case as it finds it.

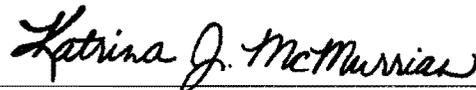
Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrin, as Prehearing Officer, that the Petition to Intervene filed by the Associated Industries of Florida 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 proceeding to:

Tamela Ivey Perdue, Esq.  
Associated Industries of Florida  
516 North Adams Street  
Tallahassee, FL 32301  
Phone: 850-224-7173  
Fax; 850-224-6532  
tperdue@aif.com

By ORDER of Commissioner Katrina J. McMurrin, as Prehearing Officer, this 29th  
day of July, 2009.



KATRINA J. McMURRIAN  
Commissioner and Prehearing Officer

( S E A L )

ARW/jca

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 Commission Clerk, 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.