

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-09-0530-PCO-EI ISSUED: July 31, 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 June 24, 2009, the Federal Executive Agencies (FEA) requested permission to intervene in this proceeding. FEA states that it consists of certain agencies of the United States Government, namely Patrick AFB, Cape Canaveral AFS, and Kennedy Space Center, which have offices, facilities, and/or installations in FPL's service area, and which purchase electric utility service from FPL. FEA asserts that the General Services Administration delegated authority to the Department of Defense to represent, through Department of the Air Force counsel, the consumer interest of FEA in this proceeding under 40 U.S.C.A 481(a)(4) and 486(d).

FEA states that of the Federal customers, the chief among them in terms of load are Patrick AFB, Cape Canaveral AFS, and Kennedy Space Center, all of whom are customers of FPL. FEA claims that electricity costs represent the largest variable expenses of operating the Federal offices, facilities, and installations, all of which will be significantly affected by any action ultimately taken by the Commission in this docket. No party has filed an objection to FEA'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 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

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interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenor takes 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).

Analysis & Ruling

It appears that FEA meets the two-prong standing test in Agrico. FEA consists of certain agencies of the United States Government, specifically Patrick AFB, Cape Canaveral AFS, and Kennedy Space Center, all of whom are FPL ratepayers. FEA contends that its substantial interests will be affected by this Commission's decision whether to increase FPL's rates. FEA further states that this is the type of proceeding designed to protect its interests. Therefore, FEA meets the two-prong standing test of Agrico. Accordingly, FEA's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FEA 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 the Federal Executive Agencies 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:

Captain Shayla L. McNeill
AFLOA/JACL-ULT
AFCESA
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Tyndall Air Force Base, Florida 32403
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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 31st
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.