

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 090002-EG
ORDER NO. PSC-09-0725-PCO-EG
ISSUED: October 30, 2009

ORDER GRANTING INTERVENTION

Pursuant to Rule 25-17.015(1), Florida Administrative Code (F.A.C.), the Commission has a continuing Energy Conservation Cost Recovery (ECCR) - Electric Utilities docket. Pursuant to Order No. PSC-09-0184-PCO-EG, issued March 27, 2009, this matter has been scheduled for a formal administrative hearing on November 2-4, 2009.

Petition for Intervention

By petition dated October 1, 2009, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) filed a Petition to Intervene (Petition) in this docket. According to its Petition, PCS Phosphate is a manufacturer of fertilizer products with plants and operations located within Progress Energy Florida, Inc.'s (PEF) electric service territory, and as such, it receives service under various PEF rate schedules. PCS Phosphate contends that in this docket, the Commission will decide, among other things, the energy conservation recovery factors applicable to PEF, including in particular the interruptible demand credits. PEF's recovery request, if approved, will substantially affect PCS Phosphate by directly increasing the cost of power supplied by PEF to the PCS facilities in and around White Springs, Florida, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. As such, PCS Phosphates contends its substantial interests will be directly affected by the Commission's decisions in this proceeding. No party has filed an objection to PCS Phosphate'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

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sufficient immediacy to entitle him to a Section 120.57 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 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 Phosphate meets the two-prong standing test in Agrico, 406 So. 2d at 482. PCS Phosphate 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. 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., PCS Phosphate 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 White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs 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:

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 30th day of
October, 2009.



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 25-22.0376, 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.