

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system.

DOCKET NO. 090505-EI  
ORDER NO. PSC-10-0056-PCO-EI  
ISSUED: January 25, 2010

ORDER GRANTING PETITION TO INTERVENE

The Office of Public Counsel (OPC) raised an issue in the fuel docket regarding who should be responsible for replacement power costs associated with the February 26, 2008, power outage at Florida Power & Light Company (FPL). By agreement of OPC and FPL, the issue was postponed until 2010 to allow completion of a federal investigation into the causes of the outage. By Order No. PSC-09-0723-PHO-EI, issued October 30, 2009, in Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, the Prehearing Officer ruled that the issue be spun-out into a separate docket to be considered as early as practicable in 2010. Accordingly, this docket was established.

Petition for Intervention

By petition dated January 19, 2010, the Florida Industrial Power Users Group (FIPUG) requested permission to intervene in this proceeding. FIPUG was also a party to Docket No. 090001-EI. FIPUG states it is an ad hoc association consisting of industrial users of electricity in Florida. According to FIPUG, the cost of electricity constitutes a significant portion of FIPUG companies' overall costs of production. FIPUG contends that its members require adequate, reasonably-priced electricity to compete in their respective markets. FIPUG asserts that in this case, the Commission will determine the measure of the cost of replacement power related to FPL's February 26, 2008 outage and how such costs should be refunded to its customers. FIPUG argues that its companies will be directly affected by the Commission's decision in this docket due to the impact on electric rates. FIPUG concludes that its substantial interest will be affected in this docket and are of the type that this proceeding is designed to protect. According to FIPUG, the purpose of the proceeding coincides with FIPUG companies' substantial interests, which are to ensure that the rates they pay are just and reasonable.

Standards for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code (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 interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 FIPUG meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FIPUG asserts that it is an association of Florida industrial electricity users. FIPUG contends that these members' substantial interests will be affected by this Commission's decision to refund costs to FPL's customers. FIPUG further states that this is the type of proceeding designed to protect its members' interests. Therefore, FIPUG's members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, FIPUG asserts that its members are customers of FPL and that its members' substantial interests will be directly affected by the Commission's decision to change FPL's rates. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FIPUG's general scope of interest and activity. FIPUG is an association which represents its members' interests, and its members are industrial electricity users who purchase power from FPL. FIPUG has represented its members in several proceedings before the Commission, including Docket No. 090001-EI, from which this docket was spun-out. Accordingly, FIPUG's members' interests will be directly affected by the rates this Commission approves for FPL. As for the third prong of the associational standing test, FIPUG is seeking intervention in this docket to represent the interests of its members in seeking just and reasonable rates. Therefore, FIPUG appears to be in a position to request the Commission to grant relief on behalf of its members.

Because FIPUG meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, FIPUG's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FIPUG 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 Florida Industrial Power Users Group 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:

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 25th day of January, 2010.



NATHAN A. SKOP  
Commissioner and Prehearing Officer

(SEAL)

LCB

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.