

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

DOCKET NO. 110041-EI
ORDER NO. PSC-11-0137-PCO-EI
ISSUED: February 28, 2011

ORDER GRANTING PETITION TO INTERVENE

On January 26, 2011, Florida Public Utilities Company (FPUC) filed a petition with the Florida Public Service Commission (Commission) requesting approval of Amendment No. 1 to the Generation Services Agreement (Amendment) between FPUC and Gulf Power Company. FPUC filed its petition for approval of the Amendment pursuant to Chapter 366, Florida Statutes. In its petition, FPUC requests that the Amendment be approved without modification to the Amendment and without modification to the underlying General Services Agreement beyond that which is outlined in the Amendment. FPUC asserts in its petition that the revised terms in the Amendment allows FPUC to develop "Time of Use" (TOU) and "Interruptible" (IS) electric rates, which were approved by the Commission in Docket No. 100459-EI¹.

Petition for Intervention

By petition dated February 11, 2011, the City of Marianna, Florida (City) requested permission to intervene in this proceeding, pursuant to Rules 28-106.205 and 25-22.039, Florida Administrative Code (F.A.C.). The City states that it is a political subdivision of the State of Florida with a population of approximately 6,200 persons. The City has several electric service accounts through which it purchases retail electric service from FPUC. The City asserts that its substantial interests will be affected by the proceeding, as the Commission will decide whether to approve FPUC's petition for approval of the Amendment.

The City further states that it is a customer with several FPUC service accounts and its electric costs will be determined by the proposed Amendment. In addition, the City's Ordinance No. 981 is the Franchise Agreement or Franchise Ordinance between the City and FPUC. Section 17 of the Franchise Ordinance requires FPUC to develop "Time of Use" (TOU) and "Interruptible" (IS) electric rates or similar electric rates schedules, which must, by the terms of the Franchise Ordinance, be "mutually agreed to by" FPUC and the City, with an effective of February 17, 2011.

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

¹ See Order No. PSC-11-0112-TRF-EI, issued on February 11, 2011, in Docket No. 100459-EI, In re: Petition for authority to implement a demonstration project consisting of proposed time-of-use and interruptible rate schedules and corresponding fuel rates in the Northwest Division on an experimental basis and request for expedited treatment, by Florida Public Utilities Company.

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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.

Analysis and Ruling

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).

Having reviewed the City’s petition to intervene in this proceeding, it appears that the City has met both prongs of the Agrico standing test and that its substantial interest may be affected by this proceeding. The City states that it is a customer of FPUC and its service accounts and electric costs will be determined by the proposed Amendment. Moreover, the City’s franchise agreement with FPUC affects the proposed Amendment. Section 17 of the Franchise Ordinance requires FPUC to develop “Time of Use” (TOU) and “Interruptible” (IS) electric rates or similar electric rates schedules, which must, by the terms of the Franchise Ordinance, be “mutually agreed to by” FPUC and the City, and which must have been effective by February 17, 2011. FPUC’s declaration that the amendment allows FPUC to develop “Time of Use” (TOU) and “Interruptible” (IS) electric rates supports the City’s assertion that its substantial interest will be affected by the Amendment. Therefore, the City’s Petition to Intervene shall be granted. Pursuant to Rule 25-22.039, F.A.C., the City takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Ronald Brisé, as Prehearing Officer, that the Petition to Intervene filed by the City of Marianna, 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:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 222-7206
Facsimile: (850) 561-6834

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 28th day of
February, 2011.


RONALD A. BRISÉ
Commissioner and Prehearing Officer

(S E A L)

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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

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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.