

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO. 100437-EI
ORDER NO. PSC-11-0373-PCO-EI
ISSUED: September 6, 2011

ORDER GRANTING INTERVENTION

In Order No. PSC-10-0632-PCO-EI, issued October 25, 2010, in Docket No. 100001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, the Commission established a docket separate from the fuel docket to review the actions at Progress Energy Florida, Inc.'s (PEF) Crystal River 3 nuclear plant (CR3) which have resulted in an extended outage and the need for PEF to purchase replacement power due to the outage. Subsequently, staff opened Docket No. 100437-EI, In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc. which allows the Commission to review facts and information related to the CR3 steam generator replacement project.

Petition for Intervention

On August 12, 2011, Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF asserts that it is an established association with more than 9,000 members in Florida, many of whom are retail customers of PEF. FRF further asserts that the Commission's decision relating to the steam generator replacement project at CR3 and consequences to PEF's actions on replacement fuel and power costs, including repair costs, actions will affect the members' substantial interests by affecting their costs for electric services. No party has filed an objection to FRF's petition, and the time for doing so has expired.

Standard 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, 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 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 (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, Florida Statutes (F.S.), 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 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 Farmworkers 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, 406 So. 2d 478. 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

It appears that FRF meets the two-prong standing in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FRF asserts that many of its members are retail electric customers of PEF and that its members’ substantial interests will be directly affected by the Commission’s decisions regarding PEF’s actions relating to (1) the steam generator replacement project; (2) the delamination events at CR3; and (3) any consequential retail electric rates due to replacement fuel and power costs as a result of CR3’s extended outage. FRF further states that this is the type of proceeding designed to protect its members’ interests. Therefore FRF’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, FRF asserts that many of its members are retail electric customers of PEF and that its members’ substantial interests will be directly affected by the Commission’s decision regarding Progress’s request for relief. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF’s general scope of interest and activity. FRF is an established association whose members are retail consumers of PEF. FRF contends that many of its members will be directly affected by the Commission’s decision on PEF’s rates and charges. In addition, FRF received party status in similar proceedings, including Docket No. 100001-EI.¹ FRF meets the third prong of the associational standing test, because the Commission’s review of the CR3 outage and PEF’s actions taken in regard to such outage may affect the electric rates

¹ Order No. PSC-10-0734-FOF-EI, issued December 20, 2010 in Docket No. 100001-EI. See, Order No. PSC-08-0487-PCO-EI, issued August 1, 2008, granting intervention in Docket No. 080001-EI, In re: Fuel and purchased power cost recovery clause and generating performance incentive factor. See also, Order No. PSC-05-0948-PCO-EI, issued October 4, 2005, in Docket No. 050001-EI.

that FRF's members must pay. Accordingly, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

Ruling

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

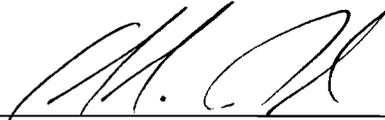
Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Petition to Intervene filed by Florida Retail Federation 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:

Florida Retail Federation
c/o Robert Scheffel Wright
John T. LaVia, III
Gardner Bist Wiener Wadsworth Bowden Bush Dee LaVia & Wright, P.A.
1300 Thomaswood Drive
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(850) 385-0070 Telephone
(850) 422-3173 Facsimile.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 6th day of September, 2011.



EDUARDO E. BALBIS
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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.