

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO. 160021-EI
ORDER NO. PSC-16-0132-PCO-EI
ISSUED: April 4, 2016

ORDER GRANTING FLORIDA INDUSTRIAL POWER
USERS GROUP'S MOTION TO INTERVENE

On January 15, 2016, 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 between March 15 and March 31, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C. The hearing for the FPL rate case is scheduled on August 22 through September 2, 2016.

Petition for Intervention

By petition dated March 11, 2016, the Florida Industrial Power Users Group (FIPUG) filed its Motion to Intervene (Motion). FIPUG states that it is an ad hoc association consisting of industrial users of electricity in Florida. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets. FIPUG's members' substantial interests are affected since increases in the cost of electricity affect their production costs, competitive postures and levels of employment. FIPUG asserts that its interests are of the type that this proceeding is designed to protect since this proceeding is to evaluate FPL's request for a rate increase phased in over a four year period and determine if it has merit. Therefore, the purpose of the hearing coincides with FIPUG's substantial interests, which is to ensure that the rates of its members receiving electrical service from FPL are just and reasonable.

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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 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....

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 prong of the test addresses the degree of injury. The second addresses 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).

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

Based upon a review of the materials provided by FIPUG 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’s members’ substantial interests are affected since increases in the cost of electricity affect their production costs, competitive postures and levels of employment. This proceeding is to determine the just and reasonable electric rates to be charged by FPL. 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 some of its members are located in FPL’s service area and receive electric service from FPL, for which they are charged FPL’s applicable service rates. Accordingly, FIPUG states that its members will be substantially affected by this Commission’s determination in this rate proceeding. 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 acts as an advocate on behalf of its member large electricity users. As for the third prong of the associational standing test, FIPUG seeks intervention in this docket to represent the interests of its members, as FPL customers, in seeking reliable service and the lowest rates possible. The relief requested by FIPUG is of a type appropriate for an association to obtain 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 Lisa Polak Edgar, as Prehearing Officer, that the Motion 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:

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
E-mail: jmoyle@moylelaw.com
kputnal@moylelaw.com

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 4th day
of April, 2016.


LISA POLAK EDGAR
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

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.