

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of IOUs' hedging practices.

DOCKET NO. 170057-EI
ORDER NO. PSC-17-0180-PCO-EI
ISSUED: May 17, 2017

ORDER GRANTING INTERVENTION

On February 28, 2017, this docket was opened by Commission staff to analyze the natural gas hedging practices of Florida's investor-owned utilities in order to determine whether natural gas hedging should be continued and, if so, whether any changes should be made to current hedging practices. A staff workshop was held on February 21, 2017, in which Florida Power & Light Company (FPL), Duke Energy Florida, LLC (DEF), Tampa Electric Company (TECO), Gulf Power Company (Gulf Power), the Office of Public Counsel (OPC), and several other interested parties, including the Florida Industrial Power Users Group (FIPUG) participated. Post workshop comments were filed on March 6, 2017, by all four investor-owned utilities, FIPUG, White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate (PCS) and the Sierra Club. By petition, dated March 23, 2017, FIPUG has requested permission to intervene in this proceeding. This docket has been set for hearing on September 27 and 28, 2017.

Petition for Intervention

In its petition, FIPUG states that it has a substantial interest as it is an ad hoc association consisting of industrial users of electricity in Florida, all of whom receive electricity from one or more of the investor-owned utilities who practice natural gas hedging as part of their fuel procurement strategies. FIPUG states that the cost of electricity constitutes a significant portion of FIPUG members' overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. FIPUG, citing Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), contends that its interests are of the type this proceeding is designed to protect, since its purpose is to evaluate whether natural gas hedging should continue given that \$6.5 billion in costs, passed on to FIPUG's members through the investor-owned utilities' respective fuel charges, have been generated by the practice since its inception in 2002. Given these facts, FIPUG concludes that the purpose of this proceeding coincides with FIPUG's substantial interests to ensure that its members are charged rates by FPL that are fair, just, and reasonable.

FIPUG has contacted DEF and FPL, who do not oppose its intervention, and TECO and Gulf Power, who take no position on its petition. TECO, however, has taken no position with the caveat that it reserves the right to oppose FIPUG's intervention for any reason in any other Commission proceeding that may affect TECO's substantial interests.

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. 2d DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, 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).

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.

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.

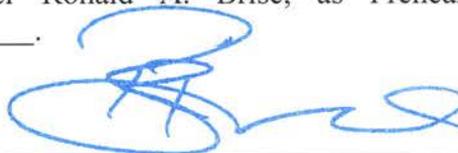
Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by 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:

Florida Industrial Power Users Group
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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer,
this 17th day of May, 2017.



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

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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.

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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.