

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to  
approve first solar base rate adjustment, by  
Duke Energy Florida, LLC.

DOCKET NO. 20180149-EI  
ORDER NO. PSC-2019-0068-PCO-EI  
ISSUED: February 25, 2019

ORDER GRANTING INTERVENTION

On July 31, 2018, this docket was established to consider Duke Energy Florida, LLC's (DEF) first Solar Base Rate Adjustment (SoBRA). Consistent with its 2017 Revised and Restated Settlement Agreement approved by Order No. PSC-2017-0451-AS-EU,<sup>1</sup> and pursuant to Sections 366.076, 120.57(2) and 366.06(3), Florida Statutes (F.S.), and Rule 28-106.301, Florida Administrative Code (F.A.C.), DEF petitioned for a limited proceeding seeking approval of its First SoBRA tranche, effective January 2019.

Petition for Intervention

By motion dated August 17, 2018, the White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) requested permission to intervene in this proceeding. In its petition, PCS Phosphate contends that the Commission is considering DEF's petition to recover costs for certain solar power facilities through rates. Any decisions made by the Commission regarding the petition may impact the cost of power supplied by DEF to PCS Phosphate's facilities in and around White Springs, Florida, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. Additionally, PCS Phosphate was a party to the 2017 Second Revised and Restated Settlement Agreement, the terms of which will inform the current proceeding. PCS Phosphate anticipates taking an active role in this proceeding.

Standards for Intervention

Pursuant to Rule 28-106.205, 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 move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), 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 that (1) he will suffer injury in fact that is of

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<sup>1</sup> Order No. PSC-2017-0451-AS-EU, issued on November 20, 2017, in Docket No. 20170183-EI, In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.

sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) the substantial injury is of a type or nature that 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. 3d 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).

PCS Phosphate meets the first prong of Agrico, because its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region will be affected by this proceeding. In addition, PCS Phosphate also meets the second prong of Agrico, because the purpose of this proceeding is to consider how the recovery of costs for certain solar power facilities through rates will be implemented. Based on the foregoing, PCS meets both prongs of Agrico and has standing to intervene. Therefore it is,

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs is hereby granted as set forth in the body of this Order. It is further

ORDERED that PCS Phosphate takes the case as it finds it. 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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Laura A. Wynn  
Stone Mattheis Xenopoulos & Brew, PC  
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By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 25th day of February, 2019.



ANDREW GILES FAY  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
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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.

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.