BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 120015-EI ORDER NO. PSC-12-0136-PCO-EI ISSUED: March 22, 2012

ORDER GRANTING PETITION TO INTERVENE

On January 17, 2012, 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 in the Spring of 2012 for an increase in rates effective January, 2013. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., FPL filed the petition for an increase in rates on March 19, 2012.

Petition for Intervention

By petition dated February 1, 2012, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF states that it is an association of over 9,000 members, many of whom are FPL retail customers. FRF contends that many of its members' substantial interests will be directly affected by this Commission's decisions regarding FPL's retail electric rates. FRF asserts that the interests it seeks to protect are of sufficient immediacy to warrant intervention, and that its members' interests in having the Commission set rates for FPL that are fair, just, reasonable, and not unduly discriminatory are interests that this rate proceeding is designed to protect. No party has filed an objection to FRF's Petition, and the time for doing so has expired.

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 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.

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).

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 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

It appears that FRF meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. FRF asserts that it is an association of over 9,000 members, many of whom are FPL ratepayers. FRF contends that these members' substantial interests will be affected by this Commission's decision to increase FPL's rates. 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 its members are customers of FPL and that its members' substantial interests will be directly affected by the Commission's decision to change FPL's rates. 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 association which represents its members' interests, and many of its members are retail electricity customers who purchase power from FPL. Accordingly, FRF's members' interests will be directly affected by the rates this Commission approves for FPL. As for the third prong of the associational standing test, FRF is seeking intervention in this docket to represent the interests of its members in seeking the lowest rates consistent with governing law and policy. Therefore, FRF appears to be in a position to request the Commission to grant relief on behalf of its members.

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 Art Graham, as Prehearing Officer, that the Petition to Intervene filed by the 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:

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By ORDER of Commissioner Art Graham, as Prehearing Officer, this 22nd day of March, 2012.

ART GRAHAM
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.

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.