

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Dorian and Tropical Storm Nestor, by Duke Energy Florida, LLC.

DOCKET NO. 20190222-EI
ORDER NO. PSC-2021-0036-PCO-EI
ISSUED: January 15, 2021

ORDER GRANTING INTERVENTION

On December 19, 2019, Duke Energy Florida, LLC (DEF or Company) filed a petition for a limited proceeding seeking authority to recover a total of \$171.3 million for the incremental restoration costs related to Hurricane Dorian and Tropical Storm Nestor. This amount includes \$2.1 million for interest incurred on the unamortized balance of incremental restoration cost and the regulatory assessment fee gross-up. In its petition, DEF requests approval of an interim storm restoration recovery charge to commence with the first billing cycle of March 2020. This matter has been scheduled for an administrative hearing on May 18-19, 2021.

Petition for Intervention

By motion dated January 2, 2020, the White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) requested permission to intervene in this proceeding. PCS Phosphate asserts that it has a substantial interest in this proceeding as it has plants and operations in and around White Springs, Florida (an area within DEF’s service territory). As such, PCS Phosphate states that the cost of electricity it pays to DEF affects its production and operating costs, its overall industry competitiveness, and the level of sustainable employment in the region. Additionally, PCS Phosphate states that it was a party to the 2017 Second Revised and Restated Settlement Agreement, which was approved by the Florida Public Service Commission by Order No. PSC-2017-0451-AS-EU¹ and the terms of that agreement will inform this proceeding. The time for filing objections to PCS Phosphate’s petition for intervention has expired with no objections having been filed as to the petition.

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.

¹ Order No. PSC-2017-0451-AS-EU, in Docket No. 20170173-EI, on November 20, 2017, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.*

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 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 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 DEF's recovery of storm restoration costs and the approval of such recovery may result additional expenditures for PCS Phosphate.

Based on the above representations, 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:

James W. Brew
Laura Wynn Baker
Stone Mattheis Xenopoulos & Brew, PC
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By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 15th day of January, 2021.



ANDREW GILES FAY
Commissioner and Prehearing Officer
Florida Public Service Commission
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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 Subsection 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.