

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0138-PCO-EI
ISSUED: April 20, 2021

ORDER PROVISIONALLY GRANTING THE ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA, INC.'S PETITION TO INTERVENE

On January 11, 2021, 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 12 and March 31, 2021, for an increase in rates effective January 2022. On March 12, 2021, Florida Power & Light Company (FPL) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case is scheduled on August 16 through August 27, 2021.

Petition for Intervention

On February 22, 2021, the Environmental Confederation of Southwest Florida, Inc. (ECOSWF) filed its Petition to Intervene (Petition). On March 1, 2021, FPL filed a Motion for Leave to File a Response to the Petition (Response).

ECOSWF states that it was organized for the purpose of conserving the natural resources of Southwest Florida, implementing energy efficiency improvements and alternatives, and engaging in actions in furtherance of energy conservation and alternative energy source development. ECOSWF alleges that it has over 100 members consisting of businesses, organizations, and individuals, a substantial number of whom are customers of FPL, who will be directly and substantially affected by the rates set in this proceeding. ECOSWF states that in this docket, FPL is seeking to recover the costs of fossil-fuel generation that has not been subject to the Power Plant Siting Act's review regarding cost-effectiveness, risk, and whether other alternatives are available to meet the identified capacity needs of FPL's ratepayers. Finally, ECOSWF states that it has been granted intervention in FPL need determination hearings based on its members' substantial interests as FPL ratepayers.

In its Response, FPL acknowledges that based upon the facts stated in ECOSWF's petition, ECOSWF appears to substantially meet the three-prong test for associational standing stated in Florida Home Builders v. Dept. of Labor and Employment Security (Florida Home Builders), 412 So. 2d 351 (Fla. 1982). However, FPL argues that ECOSWF has an affirmative duty, when challenged, to provide evidence supporting the allegations in its Petition establishing associational standing. FPL is challenging the facts that appear to support ECOSWF's associational standing. Therefore, citing Order No. PSC-2002-1260-PCO-EI,¹ FPL states that it

¹ Order No. PSC-2020-1260-PCO-EI, issued September 13, 2002, in Docket No. 20020262, In re: Petition to determine need for an electric power plant in Martin County by Florida Power & Light Company and Docket No. 20020263-EI, In re: Petition to determine need for an electrical power plant in Manatee County by Florida Power &

is entitled to conduct discovery and to present evidence, testimony, and argument regarding ECOSWF's associational standing.

Standard 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.

The test for associational standing was established in Florida Home Builders 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 Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). 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. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

Analysis & Ruling

Based upon a review of the materials provided by ECOSWF it appears that ECOSWF meets the three-prong associated standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, ECOSWF states that a substantial number of its members are customers of FPL who will be directly and substantially affected by the rates set in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within ECOSWF's general scope of interest and activity. ECOSWF is charged with implementing energy efficiency improvements and alternatives, and engaging in actions in furtherance of energy conservation and alternative energy source development. To the extent that FPL is allowed to recover the capital costs associated with fossil-fuel generation as a prudent expense rather than to implement energy conservation methods or alternatives to fossil-fuel generation, ECOSWF's mission is impacted and its members' electric rates are substantially affected. As for the third prong of the associational standing test, ECOSWF seeks intervention in this docket to represent the interests of its members in seeking fair, just, and reasonable rates based on capital investments that are

Light Company (FPL objected to the associational standing allegations plead by the Florida Action Coalition Team (FACT) who had requested intervention and was granted the right to conduct discovery and have a hearing on the standing issue.)

environmentally safe and prudent. The relief requested by ECOSWF is of a type appropriate for the association to obtain on behalf of its members.

Although ECOSWF has made allegations that support associational standing under Florida Home Builders, FPL has objected to the factual allegations supporting ECOSWF's associational status and is entitled to conduct discovery and to present evidence, testimony, and argument regarding its associational standing. Therefore, ECOSWF's associational standing shall be an issue in this proceeding and ECOSWF shall have the burden of proof with regard to this issue. Due to the fact that ECOSWF's allegations do meet the associational standing requirements of Florida Home Builders, for the pendency of this proceeding ECOSWF shall be provisionally granted all the rights and privileges associated with full party status pending final resolution of its standing by the Commission. Pursuant to Rule 28-106.205, F.A.C., LULAC takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by the Environmental Confederation of Southwest Florida, Inc. is provisionally granted as set forth in the body of this Order. It is further

ORDERED that the Environmental Confederation of Southwest Florida, Inc. 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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By ORDER of Chairman Gary F. Clark, as Presiding Officer, this 20th day of April, 2021.



GARY F. CLARK
Chairman and Presiding 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.

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.