

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the stipulation and settlement agreement between Gulf Power Company, the Office of Public Counsel, Florida Industrial Power Users Group, and Southern Alliance for Clean Energy regarding the Tax Cuts and Jobs Act of 2017.

DOCKET NO. 20180039-EI  
ORDER NO. PSC-2018-0414-PCO-EI  
ISSUED: August 22, 2018

ORDER GRANTING INTERVENTION

On February 14, 2018, Gulf Power Company (Gulf) filed a Stipulation and Settlement Agreement (SSA) between Gulf and the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), and the Southern Alliance for Clean Energy (SACE) regarding the Tax Cuts and Jobs Act of 2017 in Docket Nos. 20180013-PU,<sup>1</sup> the generic tax docket, and 20160186-EI,<sup>2</sup> Gulf's last base rate case proceeding. The SSA addresses the effects of the passage of the Tax Cuts and Jobs Act of 2017 (Act), signed into law by President Trump on December 22, 2017. The signatories to the SSA are OPC, FIPUG and SACE, all of whom were signatories to Gulf's last rate case stipulation.<sup>3</sup>

On February 19, 2018, pursuant to Section 366.076(1), Florida Statutes, this docket was opened to expedite consideration of the SSA as requested by the signatories so that the base rate reduction agreed to by the parties, if appropriate, could be implemented in April 2018. On March 26, 2018, an administrative hearing was held in which Gulf's customers and interested persons were provided with an opportunity to present public testimony and voice any concerns. Gulf sponsored witnesses Robin Boren, Rhonda Alexander, and Lee Evans, who answered questions under oath about the SSA, and four exhibits were admitted into evidence.

Order No. 2018-0180-FOF-EI, issued on April 12, 2018, approved the SSA and resolved all issues in the docket with the exception of the treatment of excess protected deferred income taxes, on which the parties were given until May 1, 2018, to reach agreement. No agreement having been reached, on April 30, 2018, Gulf filed a Petition for Limited Scope Proceeding to resolve the issue of the quantification and appropriate disposition of excess protected deferred income taxes.

Petition for Intervention

By petition dated August 7, 2018, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF states that it is an ad hoc association consisting of 8,000 members, many of whom receive electricity from Gulf, providing retail goods and services to the general public. FRF asserts that the cost of electricity constitutes a significant

<sup>1</sup> Docket No. 20180013-PU, In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.

<sup>2</sup> Docket No. 20160186-EI, In re: Petition for rate increase by Gulf Power Company.

<sup>3</sup> Order No. PSC-17-0178-S-EI, issued on May 16, 2017, in Docket No. 160186-EI, In re: Petition for rate increase by Gulf Power Company.

portion of its members' overall costs of production and that its members require adequate, reasonably-priced electricity in order to compete in their respective markets. FRF contends that its interests are of the type this proceeding is designed to protect, since its purpose is to evaluate the impact on Gulf's rates due to the changes in the federal income tax code contained in the Tax Cuts and Jobs Act of 2017, specifically the treatment of excess protected deferred income taxes. Therefore, FRF concludes that the purpose of this proceeding coincides with FRF's substantial interests: to ensure that its members are charged rates by Gulf that are fair, just, and reasonable. The time for filing objections to FRF's motion to intervene has expired with no objections having been filed.

### Standards for Intervention

Pursuant to Rule 28-106.205, 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 move for leave to intervene. Petitions 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 three-prong test set forth 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 based on the basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).<sup>4</sup> 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.

Based on the above representations, it appears that FRF has met the associational standing requirements of Florida Home Builders stated above. FRF asserts that it has a substantial number of its members that are ratepayers of Gulf and as a result are directly and substantially affected by the decision in this case. Further, keeping electricity costs as low as

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<sup>4</sup> Under Agrico, 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) the 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. 406 So. 2d 478 at 482. 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 Department of Business Regulation, 506 So. 2d 426, 434 (Fla. 1<sup>st</sup> DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

possible falls within the purview of FRF's general scope of interest and is the type of relief appropriate for FRF to receive on behalf of its members. Therefore, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Petition to Intervene filed by Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that FRF 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 Commissioner Julie I. Brown, as Prehearing Officer, this 22nd day of August, 2018.



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JULIE I. BROWN  
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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.

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.