

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery  
clause.

DOCKET NO. 20210010-EI  
ORDER NO. PSC-2021-0194-PCO-EI  
ISSUED: May 26, 2021

ORDER GRANTING PETITION TO INTERVENE  
FILED BY WHITE SPRINGS AGRICULTURAL  
CHEMICAL, INC. DBA PCS PHOSPHATE – WHITE SPRINGS

This docket has been opened pursuant to Subsection 366.96(7), Florida Statutes (F.S.), which requires the Commission to conduct an annual proceeding to determine an electric investor-owned utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. If the Commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. This matter has been scheduled for an administrative hearing beginning August 3, 2021.

The following five utilities were named as original parties when this docket was opened:

1. Florida Power & Light Company
2. Gulf Power Company
3. Tampa Electric Company
4. Duke Energy Florida, LLC
5. Florida Public Utilities Company

As set forth in the Order Establishing Procedure,<sup>1</sup> any person not listed immediately above who wishes to intervene as a party must file a Petition to Intervene in accordance with Rule 28-106.205, Florida Administrative Code (F.A.C.).

Petition for Intervention

On April 7, 2021, White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) filed a Petition to Intervene in this proceeding. PCS Phosphate avers that it is a manufacturer of fertilizer products with plants and operations located in the electric service territory of Duke Energy Florida, LLC (DEF). PCS Phosphate represents that it receives service from DEF under various rate schedules.

PCS Phosphate alleges that any decisions made by the Commission regarding rate recovery of costs associated with DEF's storm protection plan will directly impact the cost of power supplied by DEF to PCS Phosphate's facilities located in and around White Springs, Florida,

<sup>1</sup> Order No. PSC-2021-0083-PCO-EI, issued February 17, 2021.

thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. PCS Phosphate notes that it was involved in the prior storm protection plan dockets involving DEF, and is a signatory to the stipulation and settlement agreement in the most recent plan docket, which was approved by the Commission in Order No. PSC-2020-0410-AS-EI, issued October 27, 2020.

According to PCS Phosphate's petition, DEF, Walmart Inc., the Florida Industrial Power Users Group, and the Office of Public Counsel do not oppose the petition to intervene. Tampa Electric Company and Florida Public Utilities Company take no position. Florida Power & Light Company (FPL) and Gulf Power Company (Gulf) object to the petition and assert that PCS Phosphate does not have standing with regard to cost recovery for Gulf and FPL's storm protection plans, because PCS Phosphate is not a customer of those utilities. None of the utilities filed written responses to the petition and the time for doing so has expired.

### 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.

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).

### Analysis and Ruling

PCS Phosphate meets the first prong of Agrico in that the amount it pays in electric rates may be affected by this proceeding. PCS Phosphate meets the second prong of Agrico because the purpose of this proceeding is to consider the recovery of costs associated with storm protection plans through implementation of rates. Based on the foregoing, PCS Phosphate meets both prongs of Agrico.

Florida Power and Light and Gulf Power Company correctly note that PSC Phosphate's substantial interests are potentially impacted by only DEF's rates. PSC Phosphate can protect its substantial interests by intervening in this clause docket, the scope and purpose of which include consideration of cost recovery for the storm protection plans of all public utilities. Because "standing depends on the nature of the injury asserted and the purpose and scope of the administrative proceeding,"<sup>2</sup> PSC Phosphate has standing to intervene in this docket as it relates to any potential impact as a customer. Accordingly, PCS Phosphate's petition for intervention shall be granted as set forth herein. Pursuant to Rule 28-106.205, F.A.C., PCS Phosphate takes the case as it finds it.

Based upon the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Petition 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 White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate –White Springs 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  
1025 Thomas Jefferson Street, NW  
Suite 800 West  
Washington, DC 20007-5201  
Phone: (202) 342-0800  
Fax: (202) 342-0807

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<sup>2</sup> Peace River/Manasota Regional Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1083 (Fla. 2d DCA 2009) (emphasis added) (citations omitted).

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 26th day of May, 2021.



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ANDREW GILES FAY  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

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.