

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery
clause.

DOCKET NO. 20210010-EI
ORDER NO. PSC-2021-0223-PCO-EI
ISSUED: June 18, 2021

ORDER GRANTING PETITION TO INTERVENE
FILED BY NUCOR STEEL FLORIDA, INC.

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 a 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 (FPL)
2. Gulf Power Company (Gulf)
3. Tampa Electric Company (TECO)
4. Duke Energy Florida, LLC (DEF)
5. Florida Public Utilities Company (FPUC)

As set forth in the Order Establishing Procedure,¹ 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 May 17, 2021, Nucor Steel Florida, Inc. (Nucor) filed a Petition to Intervene in this proceeding. Nucor avers that it owns and operates a steel production facility located in DEF's electric service territory. Nucor represents that it purchases large amounts of electric energy from DEF to power its steel making operations.

Nucor alleges that any decisions made by the Commission regarding rate recovery of costs associated with DEF's storm protection plan will affect the rates paid by it as a customer that purchases substantial amounts of electric energy from DEF, and that the outcome of the proceeding may adversely affect Nucor's interests.

¹ Order No. PSC-2021-0083-PCO-EI, issued February 17, 2021.

DEF, Walmart, and FIPUG do not oppose the petition to intervene. TECO and PCS Phosphate take no position. FPL and Gulf object to the petition as it relates to FPL and Gulf because Nucor is not a customer of those utilities, but take no position regarding Nucor's petition as to the other utilities. No written responses were filed regarding the petition, and the time for doing so has expired.

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.

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

Nucor meets the first prong of Agrico in that the amount it pays in electric rates may be affected by this proceeding. Nucor 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, Nucor meets both prongs of Agrico.

FPL and Gulf correctly note that Nucor's substantial interests are potentially impacted by only DEF's rates. However, Nucor 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,"² Nucor has standing to

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

ORDER NO. PSC-2021-0223-PCO-EI

DOCKET NO. 20210010-EI

PAGE 3

intervene in this docket as it relates to any potential impact as a customer. Therefore, its petition to intervene is granted.

Based on the above representations, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Petition to Intervene filed by Nucor Steel Florida, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Nucor Steel 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:

Peter J. Mattheis
Michael K. Lavanga
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
pjm@smxblaw.com
mkl@smxblaw.com

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 18th day of June, 2021.



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.

SFO

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subection 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.