BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County, by Florida Power & Light Company.	DOCKET NO. 070098-EI ORDER NO. PSC-07-0238-PCO-EI ISSUED: March 16, 2007

ORDER GRANTING PETITION FOR INTERVENTION

On February 1, 2007, Florida Power & Light Company (FPL) filed a petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County pursuant to Sections 366.04 and 403.519, Florida Statutes, and Rules 25-22.080, 25-22.081, and 28-106.201, Florida Administrative Code. By Order No. PSC-07-0120-PCO-EI, issued February 9, 2007, the matter has been scheduled for a formal administrative hearing on April 16-17, 2007.

Intervenors' Petition for Intervention

By petition dated March 5, 2007, The Sierra Club, Inc (Sierra Club), Save Our Creeks (SOC), Florida Wildlife Federation (FWF), Environmental Confederation of Southwest Florida (ECOSWF), and Ellen Peterson (collectively, Intervenors) filed a Petition to Intervene (Petition) in this docket. On March 9, 2007, FPL filed a response to the Petition.

According to their Petition, The Sierra Club, FWF, ECOSWF, and SOC are all non-profit corporations with members residing in Florida. The Sierra Club has approximately 30,042 of its 700,000 national members residing in Florida. The FWF has 14,000 members residing in Florida. ECOSWF has 100 members consisting of business entities, governmental agencies and other organizations and individuals living in Southwest Florida. SOC has approximately 100 members who reside primarily in South Florida. Each of these non-profit corporations has a substantial number of its members living in FPL's service area and receiving electric service from FPL. Ellen Peterson is a member of the Sierra Club and takes electric service from FPL and contends that her property is less than half a mile from the rail line that would carry a coal train to the plants.

The Intervenors contend that, as electric consumers, the providers of their electric service will incur substantial costs associated with the proposed electric plants, which would be passed directly to the consumers through their bills once the plants are approved. In support of their request, the Intervenors state that they and their members bear a significant risk related to energy price volatility, cost impacts of future carbon regulation, inappropriate reliance on new capacity, and the health and environmental consequences of energy decisions that disproportionately rely on coal sources. Specifically, the Intervenors contend that they are entitled to intervene in this matter based on the following assertions: (1) each Intervenor has a substantial number of its members that are Florida residents that live in the FPL service area, and their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plants

because their members bear a significant risk associated with energy price volatility; (2) the members will be directly affected by the cost impacts of future carbon regulation; (3) the members will be directly affected by the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives; and (4) construction of the plants will subject members to the health and environmental consequences of energy decisions that disproportionately rely on coal sources.

FPL's Response

In its response, FPL does not object to the Intervenors' participation as parties; however, FPL argues that the Intervenors' participation should be limited to the issues that are within the Commission's jurisdiction, recognizing that other state agencies have jurisdiction over environmental, land use and other aspects of reviewing and approving the project. In addition, FPL argues that it is not appropriate to hear non-jurisdictional issues, related to land use and certification proceedings, within this need determination proceeding. Finally, FPL contends that Ellen Peterson's interests as a landowner are not within the zone of interests this proceeding is designed to address; therefore, Ms. Peterson's intervention in this proceeding should be limited to her substantial interests as a customer of FPL.

Standards of Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, 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 petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Rule 28-106.201(2), Florida Administrative Code, 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 in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that this 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. 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. 3rd 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).

Further, the test for associational standing was established 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 also based on the basic standing principles established in Agrico. 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.

Analysis & Ruling

It appears that the Sierra Club, FWF, SOC, and ECOSWF meet the two prong standing test in Agrico, as well as the three prong associational standing test established in Florida Home Builders. The Intervenors assert that their substantial interests are of sufficient immediacy to entitle them to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, the Intervenors, on behalf of their affected members, assert that their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plants because their members bear a significant risk associated with energy price volatility. With respect to the second prong of the associational standing test, the subject matter of the proceeding is clearly within the Intervenors' general scope of interest and activity. The Intervenors contend that their members will be directly affected by the inappropriate reliance on new capacity instead of considering other alternatives. In need determination proceedings, the Commission does consider whether the proposed plant is the most cost-effective alternative available. As for the third prong of the associational standing test, the Intervenors are seeking intervention in this docket in order to represent the interests of their members.

Based on the foregoing analysis, the Sierra Club, FWF, SOC, and ECOSWF have established that each has standing in this docket. With regard to the Intervenors' second and fourth assertions of standing, however, the petition fails to state grounds upon which intervention can be granted. Specifically, in their second assertion of standing, the Intervenors contend that their members will be directly affected by the cost impacts of future carbon regulation, which would increase the rates and charges that their members will be forced to pay FPL. Such assessments are speculative and conjectural, rather than real and immediate in nature. Additionally, in their fourth assertion of standing, the Intervenors contend that construction of the plants further will subject their members and other Floridians to the harmful effects of increased pollution. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of environmental compliance, however, are under the purview of the Florida Department of Environmental Protection. Therefore, the Intervenors' allegation of substantial injury with respect to this assertion is not of a type or nature which this proceeding is designed to protect.

As for Ellen Peterson, individually, it appears that she meets the two prong standing test in Agrico, in that she is a residential customer taking service from FPL whose interests may be substantially affected by this proceeding. However, Ms. Peterson's interest as a landowner are

not within the type of interests this proceeding is designed to protect; therefore, Ms. Peterson's intervention is limited to her substantial interests as a customer of FPL and not as a landowner.

Conclusion

In conclusion, the Intervenors meet the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders; therefore, the Intevenors' Petition shall be granted. However, this decision should not be construed to permit the Intervenors to raise arguments supporting their second and fourth assertions of standing. In addition, Ellen Peterson's interests as a landowner, are not within the type of interests this proceeding is designed to protect; therefore, Ms. Peterson's intervention is limited to her substantial interests as a customer of FPL and not as a landowner. Accordingly, Ms. Peterson's petition to intervene is granted as set forth herein. Pursuant to Rule 25-22.039, Florida Administrative Code, the Intervenors take the case as they find it.

Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the Petition to Intervene is granted with respect to The Sierra Club, Inc., Save Our Creeks, Florida Wildlife Federation, Environmental Confederation of Southwest Florida, and Ellen Peterson as set forth herein. 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:

Michael Gross
Earthjustice
P.O. Box 1329
Tallahassee, FL 32302
Telephone: 850-681-0031
Telecopier: 850-681-0020
mgross@earthjustice.org

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 16th day of March, 2007.

MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(SEAL)

KEF

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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.