

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Dania Beach Clean Energy Center Unit 7, by
Florida Power & Light Company.

DOCKET NO. 20170225-EI
ORDER NO. PSC-2017-0448-PCO-EI
ISSUED: November 17, 2017

ORDER GRANTING INTERVENTION TO SIERRA CLUB

On October 20, 2017, this docket was opened for the Commission's review of the Petition for Determination of Need for the Dania Beach Clean Energy Center Unit 7 (Project) filed by Florida Power & Light Company (FPL). This matter has been set for hearing on January 18 and 19, 2018.

Petition for Intervention

By petition, dated November 2, 2017, Sierra Club has requested permission to intervene in this proceeding (Petition). Sierra Club states that it is a national non-profit organization with 38,000 members who live and purchase electric utility service in Florida, with more than 17,500 members residing in areas served by FPL. Sierra Club represents that its goal is reducing pollution through public health and environmental safeguards, and through the rapid transition away from fossil fuel burning generation. The Sierra Club asserts that its interests are of the type that this proceeding is designed to protect since the construction of the Project would further commit Florida to high-cost, fossil fuel burning electric generation and defer the need for future capacity additions. Sierra Club further asserts that our evaluation of the need for the Project that is the subject of the hearing is consistent with the Sierra Club's substantial interests, which are to transition electric utilities away from burning fossil fuels and toward low cost, low risk clean energy alternatives.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), 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. 2nd DCA 1981). 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) this substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses 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).

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 this 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

Based upon a review of the materials provided, Sierra Club meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. This proceeding is designed to determine the need for the Project proposed by FPL. Sierra Club meets the first prong of Agrico because its members’ substantial interests are directly affected by the determination of need for the Project, which will result in the costs of constructing and operating the new unit, as well as the return on investment, being borne by the more than 17,500 Sierra Club members who are customers of FPL. Sierra Club meets the second prong of Agrico because (1) the Commission must consider the most cost effective alternative renewable measures that could be utilized instead of the Project; (2) Sierra Club’s members, as ratepayers, would bear the cost burden for the plant; and (3) Sierra Club advocates for cost effective alternatives to fossil fuel to meet the proposed need. Therefore, Sierra Club’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, Sierra Club asserts that more than 17,500 of its member live in FPL’s service territory and will be directly impacted by recovery in their rates for the construction and operation of the Project. In addition, Sierra Club’s members live and recreate near the Project site, and their health and enjoyment will be directly impacted if the Project is approved, instead of FPL meeting its need through conservation and renewable energy sources. Accordingly, Sierra Club states that its members will be substantially affected by this Commission’s determination of need in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be

within Sierra Club's general scope of interest and activity. Sierra Club is an association organized with the purpose of advocating for the transition away from the use of fossil fuels, which they assert are expensive, and in this proceeding we are determining whether there is a need for such a fossil fuel plant. As for the third prong of the associational standing test, Sierra Club seeks intervention to advocate on behalf of the interests of its members that there is no need for the Project. The relief requested by the Sierra Club is of a type appropriate for an association to seek on behalf of its members in a need determination proceeding

Because Sierra Club meets the two-prong standing test established in Agrieco as well as the three-prong associational standing test established in Florida Home Builders, it appears that Sierra Club's substantial interests may be affected by this proceeding. No response has been filed in opposition to Sierra Club's Petition. Therefore, the Petition shall be granted. Notwithstanding granting intervention, I remind Sierra Club that issues shall be limited to those appropriate to the scope of a determination of need. Pursuant to Rule 25-22.039, Florida Administrative Code, Sierra Club takes the case as it finds it.

Therefore, it is

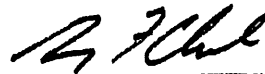
ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by Sierra Club is hereby granted. It is further

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 Gary F. Clark, as Prehearing Officer, this 17th day of Nov, 2017.



GARY F. CLARK
Commissioner and Prehearing 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.

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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.