

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-07-0314-PCO-EI
ISSUED: April 13, 2007

ORDER GRANTING 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.

AIF's Petition for Intervention

By petition dated March 28, 2007, Associated Industries of Florida (AIF) filed a Petition to Intervene (Petition) in this docket. According to its Petition, AIF states that it is a non-profit corporation and the largest association of business, trade, commercial and professional organizations in the State of Florida. It represents over 7,500 corporations, professional associations, partnerships and proprietorships, many of whom are retail customers of FPL. AIF contends that, as representative of its many members who are FPL retail customers, its members substantial interests will be directly affected by the Commission's decisions regarding the proposed plants. AIF supports FPL's application for the Glades power plant. In support of its request, AIF states that its members require adequate, reasonably priced electricity in order to conduct their business consistently with the needs of their customers and ownership. No party filed a written response to AIF's Petition. At the Prehearing Conference held in this matter on Thursday, April 5, 2007, no party objected to AIF's intervention in this docket.

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 evidentiary 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 by 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

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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 AIF meets the two prong standing test in Agrico, as well as the three prong associational standing test established in Florida Home Builders. AIF asserts that their substantial interests are of sufficient immediacy to entitle them to participate in this proceeding and are the types of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, AIF, 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 the Commission's decision will have a real and immediate impact on fuel diversity and the adequacy of electric supply in Florida and, therefore, on the adequacy of electric service provided by FPL to AIF's members. With respect to the second prong of the associational standing test, the subject matter of the proceeding is clearly within AIF's general scope of interest and activity. AIF contends that their members will be directly affected because the Commission's decision could impact the price of electricity for AIF's members. As for the third prong of the associational standing test, AIF is seeking intervention in this docket in order to represent the interests of its members.

Based on the foregoing analysis, AIF has established that it has standing in this docket.

Conclusion

In conclusion, AIF meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders; therefore, AIF's Petition is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, AIF takes the case as they find it.

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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 Associated Industries of Florida 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:

Tamela Ivey Perdue
Stiles, Taylor & Grace, P.A.
Post Office Box 1140
Tallahassee, FL 32301
Phone: 850-222-2229
Fax: 850-561-3642

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 13th day of April, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

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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 25-22.060, 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.