

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company.	DOCKET NO. 080203-EI
In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company.	DOCKET NO. 080245-EI
In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company.	DOCKET NO. 080246-EI ORDER NO. PSC-08-0398-PCO-EI ISSUED: June 17, 2008

ORDER DENYING INTERVENTION

On June 9, 2008, Mr. Panagioti Tsolkas filed a Petition to Intervene in these need determination dockets. Mr. Tsolkas requests intervenor status as an individual and as a representative of Palm Beach County Environmental Coalition (PBCEC). Mr. Tsolkas states that he is a resident of Palm Beach County and a ratepayer of a municipal utility that has financial relations with Florida Power & Light Company (FPL). Mr. Tsolkas also states that PBCEC is comprised of participants in the greater Palm Beach County region, which is predominated by FPL ratepayers. The petition to intervene included a "Pre-Hearing Statement" containing positions on the issues identified in the dockets, as well as some additional explanatory statements. The petition also requested that the Commission hold its administrative hearing in the dockets in Palm Beach County.

On June 12, 2008, FPL filed its Response in Opposition to Request for Intervention of Pangioti Tsolkas. FPL argues that Mr. Tsolkas's petition does not demonstrate that either he or PBCEC have standing to intervene in these dockets because they have not met the legal tests required to show either individual or associational standing. FPL asserts that Mr. Tsolkas is not a customer of FPL, PBCEC is not a customer of FPL, and the petition does not identify any of its members who are customers of FPL. Further, according to FPL, PBCEC is an ad hoc organization that is not registered with the Florida Department of State and not chartered to conduct business in Florida as a non-profit association. FPL argues that PBCEC is therefore not a legal entity entitled to maintain or intervene in any legal action in the state. Finally, FPL argues that even if the organization itself might be entitled to intervene in these cases, the petition does not demonstrate that Mr. Tsolkas is entitled to represent it because he is neither an attorney nor a duly qualified representative as the Uniform Rules of Administrative Procedure require. For these reasons, FPL requests that the Commission deny the intervention petition.

Commission Rule 25-22.039, Florida Administrative Code (F.A.C.), implements the standards for participation as a party in an administrative proceeding set out in section 120.52(12), Florida Statutes (F.S.). The rule provides as follows:

DOCUMENT NUMBER-DATE

05136 JUN 17 08

FPSC-COMMISSION CLERK

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 include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceedings 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.

Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981) prescribes a two-prong test for determining whether a person has a substantial interest that is subject to determination or will be affected through the proceeding. That test requires a demonstration that: first, the person will suffer an injury in fact of sufficient immediacy to entitle participation as a party in the proceeding, and second, that the injury is of a type or nature which the proceeding is designed to protect. If both prongs of the Agrico test are not met the person does not have standing to participate as a party in a formal administrative hearing.

Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker's Rights Organization, Inc. v. Dept. of Health and Rehabilitative Svcs., 417 So. 2d 753 (Fla. 1st DCA 1982), apply the Agrico test to associations, and also require that an association requesting intervention must show that a significant number of its members will be substantially affected by the results of the proceeding, the subject matter of the proceeding is within the group's general scope of interest, and the relief requested is of the type appropriate for an organization to receive on behalf of its members. Furthermore, Rule 28-106.106, F.A.C. provides that an association must be represented by an attorney who is a member of the Florida Bar, a duly designated law student, or an individual duly authorized as a Qualified Representative, to participate in a formal administrative proceeding.

The petition to intervene fails to demonstrate that either Mr. Tsolkas or PBCEC has standing to participate as a party in this proceeding. Mr. Tsolkas is not a customer of FPL and the petition does not allege any facts to show that he has a substantial interest that will be affected by the outcome of the proceeding or that his interest is one this need determination proceeding is designed to protect. PBEC is not registered with the Secretary of State's Division of Corporations and is not chartered to conduct business as a nonprofit association in Florida. The petition does not allege any facts to show that PBEC's participation as a party meets either prong of the Agrico test or the associational standing requirements of Florida Home Builders and Farmworker's. In addition, the petition does not allege any facts that demonstrate that Mr. Tsolkas is qualified to represent it.

For the reasons stated above, I deny the petition to intervene. Mr. Tsolkas and members of PBCEC are invited to provide public testimony at the hearing in these dockets, which the Chairman of the Commission has scheduled for June 23-24, 2008, at the Commission's offices in Tallahassee, Florida. Further, the Pre-Hearing Statement included in the petition to intervene will be included in the correspondence side of the consolidated docket file and available for the Commissioners' review.

Based upon the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as prehearing officer, that the Petition for Intervention filed by Panagioti Tsolkas and the Palm Beach County Environmental Coalition is denied.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 17th day of June, 2008.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

MCB

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.