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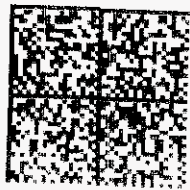
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*090372-EG motion for
Order granting
Reconsideration.*

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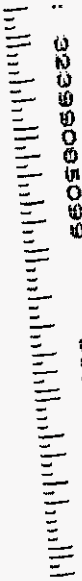
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of negotiated
purchase power contract with FB Energy, LLC
by Progress Energy Florida.

DOCKET NO. 090372-EQ
ORDER NO. PSC-10-0434-FOF-EQ
ISSUED: July 6, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

ORDER GRANTING MOTION FOR RECONSIDERATION AND
LEAVE TO FILE AMENDED PROTEST

BY THE COMMISSION:

On July 16, 2009, Progress Energy Florida, Inc. (PEF or Company) filed a petition requesting approval of a contract for the purchase of firm capacity and energy between PEF and Florida Biomass Energy, LLC (FB Energy). The contract is based on FB Energy constructing, owning, and operating a fluidized bed boiler power production generating qualifying facility located in Manatee County, Florida. The facility will use a waste wood and energy crop as its primary fuel to produce approximately 60 megawatts of electricity during a contract term beginning January 1, 2013, through December 31, 2032.

We approved the proposed contract at its December 1, 2009, Agenda Conference, and subsequently issued Order No. PSC-09-0852-PAA-EQ on December 30, 2009, approving the contract between PEF and FB Energy (PAA Order). On January 20, 2010, US Funding Group, LLC (Funding Group) timely filed its Petition Protesting Notice of Proposed Agency Action Order Approving Negotiated Purchase Power Contract (Petition). On February 10, 2010, FB Energy filed its Motion to Dismiss Funding Group's Petition (Motion to Dismiss). Funding Group filed its Response and Amended Response to FB Energy's Motion to Dismiss on February 17 and February 18, 2010, respectively.

By Order No. PSC-10-0256-FOF-EQ, issued April 26, 2010, we granted FB Energy's Motion to Dismiss, stating that Funding Group's Petition failed to demonstrate it had standing to pursue a protest and request a hearing under the two-prong test required by Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

On May 11, 2010, Funding Group filed a Motion for Reconsideration of Order No. PSC-10-0256-FOF-EQ, stating that it should have been given leave to amend its protest of Order No. PSC-09-0852-PAA-EQ. On May 18, 2010, FB Energy filed a Response to the Motion for Reconsideration, stating its belief that Order No. PSC-10-0256-FOF-EQ was correct on all

DOCKET NO. 090372-EQ

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FLORIDA PUBLIC SERVICE COMMISSION

points, but that in an abundance of caution, Funding Group should be given leave to amend its protest.

This order addresses Funding Group's Motion for Reconsideration. While none of the parties requested oral argument pursuant to Rule 25-22.022(1), Florida Administrative Code (F.A.C.), we note that oral argument may be heard at our discretion pursuant to Rule 25-22.022(7)(b), F.A.C. We have jurisdiction over this matter pursuant to Sections 366.051, 366.81, and 366.91, Florida Statutes (F.S.).

Decision

Standard of Review

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); citing State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., 294 So. 2d at 317.

Funding Group's Motion

In its Motion for Reconsideration, Funding Group cites to Section 120.569(2)(c), F.S., which provides that dismissal of a petition shall, at least once, be without prejudice to the petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. In Order No. PSC-10-0256-FOF-EQ, we stated that:

In its Response, Funding Group requests if we grant FB Energy's Motion to Dismiss, that Funding Group be allowed to timely file an Amended Petition curing any identified defect. Section 120.569(2)(c), F.S., provides that dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, *unless it conclusively appears from the face of the petition that the defect cannot be cured* (emphasis added). While Funding Group may vigorously object to the building of FB Energy's proposed plant and while it may also have legitimate concerns as to the effect of the proposed plant to its property, for the reasons discussed above, those concerns are not sufficient to satisfy the standing requirements necessary to pursue a hearing in this proceeding. Thus, we do not believe that the defects identified with respect to Funding Group's Petition can be cured by filing an amended petition.