

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination)	DOCKET NO. 910883-EI
of Need for a Proposed Electrical)	ORDER NO. 25224
Power Plant and Related Facilities)	ISSUED: 10/16/91
in Polk County by Tampa Electric)	
Company.)	

ORDER GRANTING INTERVENTION, GRANTING PARTIAL EXTENSION OF TIME TO FILE TESTIMONY, AND DENYING MOTION REGARDING DISCOVERY

On October 8, 1991 and October 11, 1991, the Commission received petitions from the Florida Industrial Cogeneration Association (FICA) and Ark Energy, Incorporated (Ark) to intervene in this need determination proceeding. FICA also filed a Motion to Extend the Time for Filing Intervenor Testimony and a Motion Regarding Discovery that contains a three part request for changes to the Commission's usual discovery timetables and procedures. Ark has also filed a Motion for Extension of Time to File Direct Testimony. FICA has requested expedited treatment of the outstanding petitions and motions. To accommodate the request for expedited treatment of these matters, this order will include the prehearing officer's decision on all outstanding procedural motions in the case.

The Petitions To Intervene

The petitions to intervene are hereby granted. Under our Rule 25-22.039, Florida Administrative Code, persons who can demonstrate a constitutional or statutory right to participate, or persons who can demonstrate that their substantial interests will be affected or determined through Commission proceedings, are entitled to participate as intervenors in those proceedings. The petitioners have demonstrated that their substantial interests will be affected by the Commission's action in this need determination proceeding and thus they should be granted intervenor status. As Rule 25-22.039 clearly states, however, "[i]ntervenors take the case as they find it", and this principle will control the decisions on the motions described below.

The Motions for Extension of time to File Intervenor Testimony and the Motion Regarding Discovery

The Motions for Extension of Time to File Testimony are granted to the extent that the extension does not require changes to the schedule of major events in this case. The Motion Regarding Discovery is denied in toto. FICA and Ark have not shown any credible extraordinary circumstances that would entitle them under any statute, rule, or constitutional principle to an extension of time that would delay the scheduled hearing and prehearing in this case. Nor has FICA demonstrated that it is entitled to an expansion of the established discovery process in this case, while at the same time it is entitled to a decrease in the time allowed to respond to that expanded discovery.

DOCUMENT NUMBER-DATE.

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FPSC-RECORDS/REPORTING

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Tampa Electric Company filed a Letter of Intent to File its Petition for Determination of Need with the Chairman of the Commission on August 26, 1991, and a docket was opened for the case the same day. The Petition itself was filed on September 5, 1991. Discovery in this case has been proceeding for over five weeks. The number of interrogatories permitted has already been expanded greatly beyond the usual 30 permitted by Rule 1.340, Florida Rules of Civil Procedure.

FICA argues that an extension of time to file testimony and to perform discovery in this case would not be inconsistent with the time provisions of the Power Plant Siting Act, section 403.509, Florida Statutes, or Rule 25-22.080, Florida Administrative Code. TECO, it argues, has not yet filed its application for certification under the Act, and therefore the time periods are not yet mandatory.

The argument may be correct, but it simply supports the legal conclusion that the decision to adhere to the time periods established by the rule is within the Commission's reasonable discretion. The time periods incorporated in Rule 25-22.080 are statutorily approved time periods considered by the Legislature to be reasonable for a determination of need proceeding, and the Commission certainly has the discretion to follow the provisions of its own rule, as it has chosen to do in this case. The intervenors have not demonstrated extraordinary circumstances, or irrevocable harm that would militate against adherence to the accepted time schedule for this docket.

In light of the fact that section 403.508(3) of the Electrical Power Plant Siting Act provides that ". . . an affirmative determination of need shall be a condition precedent to the conduct of the certification hearing" required by the Act, the practice of filing a Petition for Determination of Need well in advance of an Application for Power Plant Certification has become a common and well-accepted one. It is clearly contemplated by Rule 25-22.080(1), Florida Administrative Code, which states that, "[p]roceedings may begin prior to the filing of an application for site certification of the proposed electrical power plant."

In any event, the Commission would certainly require a significant reason to contravene the provisions of its own rule when the parties requesting the waiver have themselves failed to intervene promptly in the proceeding.

Nevertheless, a limited extension of time to October 31, 1991 will be granted to file staff and intervenor testimony. An extension of time to November 8, 1991, the date of the prehearing

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conference, will be granted to file rebuttal testimony. No party will be prejudiced by such an extension, and the dates of the hearing and prehearing will remain as scheduled. The date for completion of discovery will remain November 22, 1991, leaving approximately five weeks to conduct discovery. The number of interrogatories allowed will remain at 75. No specific changes to the method of production of documents will be ordered. All parties are expected, however, to make every effort to accommodate the reasonable discovery requests of the other parties as expeditiously as possible.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Petitions to Intervene filed by The Florida Industrial Cogeneration Association, and Ark Energy Incorporated are 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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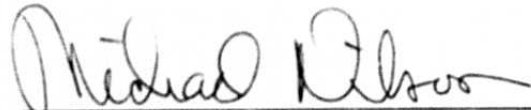
It is further

ORDERED that the Motions for Extension of Time to File Prepared Testimony are granted to the extent that the date for filing staff and intervenor testimony will be extended from October 16, 1991 to October 21, 1991. The date for filing company rebuttal testimony will be extended from October 28, 1991 to November 4, 1991. It is further

ORDERED that the Motion Regarding Discovery is denied. It is further

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By ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 16th day of OCTOBER, 1991.



MICHAEL MCK. WILSON, Commissioner
and Prehearing Officer

(S E A L)
MCB
TECO.MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, 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.