

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint petition for approval of standard offer contracts of FLORIDA POWER CORPORATION and AUBURNDALE POWER PARTNERS, LIMITED PARTNERSHIP.)
DOCKET NO. 940819-EQ)
ORDER NO. PSC-94-1505-FOF-EQ)
ISSUED: December 7, 1994)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DISMISSING PETITIONS FOR FORMAL PROCEEDINGS
AND ACKNOWLEDGING VOLUNTARY DISMISSAL

BY THE COMMISSION:

On October 24, 1994, we issued a Notice of Proposed Agency Action, Order No. PSC-94-1306-FOF-EQ, in which we approved certain modifications to two standard offer cogeneration contracts that Florida Power Corporation (FPC) had negotiated with LFC 47 Corporation (LFC 47) and Auburndale Power Partners, Limited Partnership (Auburndale). In that order, we indicated that the proposed action would not become effective or final if any person whose substantial interests were affected by the proposed action filed a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, by the close of business on November 14, 1994.

On November 14, 1994, two individuals, Ann Smith and Evander Bend, filed separate petitions for formal proceedings in this docket. Auburndale and LFC filed motions to dismiss both petitions for formal proceedings on November 16, 17, and 18, 1994. The parties requested oral argument on the motions. They also requested that they be permitted to recover costs and reasonable attorneys fees from Mr. Bend and Ms. Smith under the provisions of Section 120.59(6), Florida Statutes. Thereafter, on November 28, 1994, Evander Bend withdrew his petition for a formal proceeding. The motions to dismiss that petition are therefore moot. Ms. Smith did not withdraw her petition.

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FPSC-RECORDS/REPORTING

Ms. Smith alleges that she is a resident of Jefferson County, where one of the LFC cogeneration facilities is located. Ms. Smith states that her substantial interests will be affected by the Commission's action approving the contract modifications, because if the assignment of the standard offer contracts to the Auburndale cogeneration facility in Polk County takes place, there will be an increase in utility rates in Madison and Jefferson counties and a loss of local jobs and economic benefits that flow from the operation of the LFC plants. Ms. Smith also alleges that the modifications we approved will not be cost-effective to "The Florida Ratepayer".

At our December 6, 1994, Agenda Conference, Auburndale and LFC 47 waived their request for costs and attorneys fees for the purpose of expediting our decision on the validity of the remaining petition for formal proceeding.

Auburndale and LFC 47 claim that Ms. Smith does not allege a sufficient interest to establish the requisite standing to request a formal proceeding under Section 120.57, Florida Statutes, or the Commission's Rule 25-22.029(4), Florida Administrative Code. They also allege that the petition was only filed to delay final Commission action, jeopardize the consummation of the contract modifications, and prevent delivery of power to FPC from the Auburndale facility by January 1, 1995, the in-service date of the contract. There is some indication that Ms. Smith is not actually a resident of Jefferson County, and that she did not file her petition to protect her own interests, but to further the interests of other individuals.

At our December 6, 1994, Agenda Conference, we denied the parties' request for oral argument, but granted the motions to dismiss Ms. Smith's petition. Our reasons for dismissing the petition follow.

Rule 25-22.029 (4), Florida Administrative Code, "Point of Entry into Proposed Agency Action Proceedings", provides that a person may file a petition for a formal hearing pursuant to section 120.57, Florida Statutes, if that person's substantial interests may or will be affected by our proposed action. As the Court stated in Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2d DCA 1981):

[B]efore one can be considered to have a substantial interest in the outcome of the proceeding he 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 his substantial injury is of a type or nature which the proceeding is designed to protect.

Ms. Smith's petition for formal hearing in this case fails to meet either prong of this test for substantial interest. Ms. Smith only states that her substantial interests will be affected by our action approving the contract modifications, because if the assignment of the standard offer contracts to the Auburndale cogeneration facility in Polk County takes place, there will be an increase in utility rates in Madison and Jefferson counties, and a loss of local jobs and economic benefits that flow from the operation of the LFC plants. Ms. Smith also alleges that the modifications we approved will not be cost-effective to "The Florida Ratepayer"; but these are all general, unspecified allegations that do not relate in any direct or immediate way to the circumstances of the petitioner.

Ms. Smith does not allege that she will experience an increase in utility rates as a result of our action, or that she will be affected by a loss of jobs in Jefferson County. Even if Ms. Smith had made those assertions, they would not be sufficient to grant her petition. There is no proceeding presently before us to increase FPC's rates as a result of the standard offer contract modifications, and the price for purchased power that FPC will pay under the terms of the contracts in question will not change whether the power is provided by LFC 47 or by the Auburndale facility. Also, job security is not an interest that section 366.82, Florida Statutes, and our cogeneration rules are designed to protect.

Furthermore, there is evidence that Ms. Smith does not take any utility service in Jefferson County, and, as indicated earlier, there is considerable question whether Ms. Smith is really a resident of the county as she alleges in her petition. We find that Ms. Smith's petition is insufficient to demonstrate a substantial interest in the outcome of this proceeding. Therefore, we dismiss the petition for formal proceedings with prejudice. We hold that Order No. PSC-94-1306-FOF-EQ is now a final order, effective December 6, 1994, and, we close this docket. We direct our staff to look into the possibility that Ms. Smith's petition for formal proceeding was filed for an improper purpose, and return to us with their recommendation, if necessary, in a separate proceeding.

ORDER NO. PSC-94-1505-FOF-EQ
DOCKET NO. 940819-EU
PAGE 4

Based on the foregoing, it is

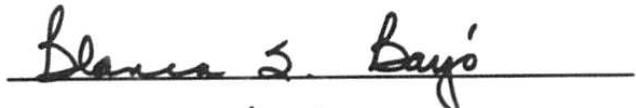
ORDERED by the Florida Public Service Commission that Ms. Smith's petition for formal proceeding is hereby dismissed with prejudice. It is further

ORDERED that Mr. Bend's voluntary withdrawal of his petition for a formal proceeding is acknowledged. It is further

ORDERED that the Notice of Proposed Agency Action, Order No. PSC-94-1306-FOF-EQ is final and effective, as of December 6, 1994. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 7th day of December, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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DISSENT

Chairman Deason dissents from the Commission's decision to deny Auburndale's and LEF 47 Corporation's requests for oral argument.

ORDER NO. PSC-94-1505-FOF-EQ
DOCKET NO. 940819-EU
PAGE 5

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 the Commission's final action in this matter may request 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.