

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine
need for an electrical power
plant in Martin County by
Florida Power & Light Company.

DOCKET NO. 020262-EI

In re: Petition to determine
need for an electrical power
plant in Manatee County by
Florida Power & Light Company.

DOCKET NO. 020263-EI
ORDER NO. PSC-02-1205-PCO-EI
ISSUED: September 4, 2002

ORDER GRANTING PETITION TO INTERVENE

The Florida Partnership for Affordable Competitive Energy (PACE) filed a Petition to Intervene in these need determination dockets on August 22, 2002. Florida Power & Light Company (FPL) responded in opposition to PACE's petition on August 29, 2002.

PACE states that it is a statewide trade association of independent power producers who are able to provide electric power to meet Florida's energy needs. Pace asserts that a decision on FPL's request for need determinations will affect the substantial interests of PACE's members by affecting their opportunity to provide cost-effective alternatives to public utility-owned generating capacity. PACE contends that since one purpose of this proceeding is to ascertain whether FPL has proposed the most cost-effective capacity solution, PACE's interests are of the type that this proceeding is designed to protect. PACE further asserts that it meets the test for associational standing as set forth in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and as extended by Farmworker's Rights Organization, Inc. v. Dept. of Health and Rehabilitative Svcs., 417 So. 2d 753 (Fla. 1st DCA 1982), because a substantial number of its members will be substantially affected by the results of this proceeding, the subject matter of the proceeding is within the association's general scope of interest, and the relief requested is of the type appropriate for a trade association to receive on behalf of its members.

FPL responds that the Petition should be denied because PACE does not have standing to participate in the case. According to

DOCUMENT NUMBER-DATE

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FPL, Florida Home Builders, *supra*, requires that a substantial number of individual members would have standing in their own right. That standing is governed by the test described in Agrico Chem. Co. v. Dept of Env'tl. Reg., 406 So. 2d 478 (Fla. 2nd DCA 1981). FPL contends the majority of PACE's members have either already intervened individually in the case or have no standing to intervene individually. Since the Commission's bidding rules require that a potential supplier actually bid in the process, FPL claims only those members of PACE who actually bid are eligible to confer standing on PACE. Further, FPL claims that any individual members who have already intervened on their own behalf are ineligible to confer standing on PACE.

FPL also claims that PACE's members are already adequately represented in the proceeding, or could have represented their own interests without PACE's participation. FPL asserts that intervention is not appropriate if a party's interests are already represented in the proceeding. FPL finally asserts that participation by PACE would improperly shift the focus of the proceeding from FPL's need determinations to a proceeding to determine rulemaking, generic, or precedential issues, which are not appropriate subjects for a need determination hearing. FPL asserts that concerns over legal precedent are insufficient to constitute a substantial interest which would confer standing.

According to Rule 25-22.039, Florida Administrative Code, intervenors must:

[D]emonstrate 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 through the proceeding.

PACE meets the standards for intervention set forth in Florida Home Builders. A substantial number of PACE's members will be substantially affected by the Commission's decision in these dockets, the subject matter of this proceeding is within PACE's general scope of interest and activity, and the relief PACE seeks to receive, i.e., a determination of the cost effectiveness of FPL's proposals, is of a type appropriate for its members. The

individual intervention and subsequent withdrawal of a number of PACE's members in this proceeding should not be a bar to PACE's participation. The fact that a member of an organization chooses to intervene and then subsequently withdraws, or chooses not to intervene at all, should not preclude the association from representing that member's interests in the same proceeding. Such a conclusion could have the adverse effect of preventing an organization from the participation in administrative proceedings that is available to it under Florida Law. Florida's administrative procedures are designed to encourage public participation in agency decision-making (see Florida Home Builders, at 352-353). PACE's intervention will be limited by the substantial interests of its members; and the evidence it submits and the arguments it proposes will likewise be limited by the issues established in the proceeding.

PACE has adequately alleged that the substantial interests of its members may be affected by the Commission's decision in these dockets, and that those interests are both the type of interest the Commission's need determination proceedings are designed to protect and the type of interest PACE is entitled to represent on behalf of its members. For these reasons, PACE's Petition to Intervene is granted.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason as Prehearing Officer that the Petition to Intervene filed by the Florida Partnership for Affordable Competitive Energy is 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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ORDER NO. PSC-02-1205-PCO-EI
DOCKETS NOS. 020262-EI, 020263-EI
PAGE 4

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By ORDER of Commissioner J. Terry Deason as Prehearing
Officer, this 4th day of September, 2002.



J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)
LDH

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, if issued by a Preheating 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,

ORDER NO. PSC-02-1205-PCO-EI
DOCKETS NOS. 020262-EI, 020263-EI
PAGE 5

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 Director, Division of the Commission Clerk and Administrative Services, 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.