

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Treasure Coast Energy Center Unit 1, proposed electrical power plant in St. Lucie County, by Florida Municipal Power Agency.	DOCKET NO. 050256-EM ORDER NO. PSC-05-0679-PCO-EM ISSUED: June 20, 2005
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ORDER GRANTING INTERVENTION

On June 9, 2005, the City of Vero Beach (Vero Beach) filed a petition to intervene in this need determination proceeding. Vero Beach states that it is currently a member of the Florida Municipal Power Agency's (FMPA) All Requirements Project (ARP), under which it sells its generation to FMPA and purchases almost all of its electric load requirements from FMPA. In December of 2004, Vero Beach notified FMPA pursuant to the ARP agreement that it intended to withdraw its load and generation from the ARP in 2010. Vero Beach asserts that its expected withdrawal from the ARP calls into question FMPA's claimed need for additional generating capacity in the Summer of 2008. Even if a need exists, Vero Beach states, the question remains whether the proposed Treasure Coast unit is the most cost effective alternative to meet the need. Vero Beach asserts that it has a substantial interest in the proceeding, because its power supply costs may be affected by the approval of the new unit.

On June 16, 2005, FMPA filed a Response in Opposition to City of Vero Beach's Petition to Intervene. FMPA claims Vero Beach can not satisfy the requirement articulated in Agrico Chem. Co. v. Dept of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), that a party claiming a substantial interest in an agency proceeding must show: 1) that it will suffer an injury in fact that is of sufficient immediacy to entitle it to a formal administrative hearing; and 2), that the interest is of a type or nature the proceeding is designed to protect. FMPA states that, as a member of FMPA, Vero Beach has the same interest in the proceeding that FMPA has. FMPA claims that any decision by the Commission in this case will not adversely affect "an interest of [Vero Beach's] that has not already been determined by [Vero Beach's] voluntary participation in the FMPA All-Requirements Power Supply Project." (FMPA's Response, p. 1)

Citing several excerpts from its ARP contract, FMPA states that Vero Beach's agreements under that contract preclude any standing to intervene as an ARP Participant. FMPA argues that this need determination proceeding conducted under the provisions of section 403.519, Florida Statutes, is not designed to resolve any contractual disputes that Vero Beach may have with FMPA or the other ARP Participants. FMPA states that the Commission has no jurisdiction over such contractual matters, and therefore Vero Beach's membership in FMPA and the ARP cannot confer standing to participate in this case. FMPA also argues that Vero Beach's claim that the outcome of the case may affect its power supply costs is too speculative to support standing.

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It is true that in this need determination proceeding the Commission will not interpret the contractual provisions of the ARP contract, or resolve the contractual disputes between FMPA and Vero Beach. Since the Commission will not interpret or enforce the ARP contract it will not consider the terms of the ARP contract to be dispositive of Vero Beach's right to intervene in this proceeding, either. Vero Beach has alleged that its power supply costs may be adversely affected by the Commission's decision in this case. According to Vero Beach, if the need determination is approved, it will pay the increased costs associated with construction of the plant even though Vero Beach intends to withdraw from the ARP. Vero Beach has questioned both the cost-effectiveness of the proposed plant and the need for the plant. Its interest and that of its customers in reasonable power supply costs will be affected by this case. It does not appear to be speculative, and it is the type of interest this need determination proceeding was designed to protect.

Based on the foregoing, it is


ORDERED, by Commissioner J. Terry Deason, as Prehearing Officer, that the Petition to Intervene filed by the City of Vero Beach is granted. It is further

ORDERED that all parties to these proceedings shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in these proceedings, to:

Brian D. O'Neill, Esquire
(Attorney for City of Vero Beach)
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W.
Washington, D.C. 00009

Mr. James Gabbard, Interim City Manager
Mr. Paul Thompson, Utilities Director
City of Vero Beach
1053 - 20th Place
Vero Beach, FL 32961

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 20th day of
June _____, 2005.


J. TERRY DEASON
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 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.