

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.

DOCKET NO. 060635-EU  
ORDER NO. PSC-06-0899-PCO-EU  
ISSUED: October 26, 2006

ORDER GRANTING IN PART AND DENYING IN PART  
EMERGENCY MOTION FOR EXTENSION OF TIME AND  
REVISING DATE FOR INTERVENOR TESTIMONY AND EXHIBITS

On September 19, 2006, the Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee (Tallahassee) (collectively, Applicants) filed a petition for a determination of need for a proposed electrical power plant in Taylor County pursuant to Section 403.519, Florida Statutes, and Rule 25-22.080, Florida Administrative Code (F.A.C.). By Order No. PSC-06-0819-PCO-EU, issued October 4, 2006, the matter has been scheduled for a formal administrative hearing on January 10, 2007. By petition dated September 25, 2006, Rebecca J. Armstrong (Armstrong), requested permission to intervene in this docket. Intervention was granted on October 20, 2006, by Order No. PSC-06-0867-PCO-EU. On October 18, 2006, Armstrong filed an Emergency Motion for Extension of Time to File Testimony (Motion). The Applicants filed a Response in Opposition to Armstrong's Motion (Response) on October 19, 2006. On October 23, 2006, Armstrong filed a Reply to the Applicant's Response to Armstrong's Motion (Reply).

In her Motion, Armstrong contends that, at the time of filing her Motion, the Commission had not yet acted on her petition for intervention. Order No. PSC-06-0819-PCO-EU requires intervenors to prefile any testimony and associated exhibits by October 24, 2006. Armstrong contends that the amount of time afforded for intervenor testimony is insufficient, especially in light of the amount of time the Applicants had to prepare their case in chief, prior to filing for a determination of need on September 19, 2006. The Motion further contends that on its face, the timetable established in Order No. PSC-06-0819-PCO-EU constitutes a violation of a citizen's federal and state constitutional rights to due process and a fair hearing. Armstrong requests that the procedural schedule in this docket be modified to permit intervenors to file testimony and exhibits by January 26, 2007, and that all other dates established in Order No. PSC-06-0819-PCO-EU be delayed for a corresponding period of time.

The Applicants respond that Armstrong provides no factual or legal support for her assertion that Order No. PSC-06-0819-PCO-EU constitutes a violation of Armstrong's constitutional rights to due process and a fair hearing. The Applicants contend that the procedural schedule established in this docket is by no means unusual for proceedings of this type and is designed to ensure compliance with the Commission's Rule 25-22.080, F.A.C.

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In their Response, the Applicants also contend that Armstrong provides no basis to conclude that more time is needed to prepare intervenor testimony than what has been provided in prior Commission orders and that Armstrong's Motion effectively admits that she is well familiar through extensive publicity that the Applicants have been considering the proposed power plant "for a year or more." Thus, the Applicants argue that Armstrong has had ample time to engage potential witnesses.

The Applicants cite Rule 28-106.211, F.A.C., which provides that the Prehearing Officer has broad authority to issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case. The Applicants contend that Armstrong's Motion fails to provide support that the schedule established by Order No. PSC-06-0819-PCO-EU constitutes an abuse of discretion or somehow fails to provide due process. The Response characterizes Armstrong's Motion as an untimely request for reconsideration of Order No. PSC-06-0819-PCO-EU, and for the reasons stated in the Response, Armstrong's Motion should be denied.

On October 23, 2006, Armstrong filed a Reply to the Applicant's Response to Armstrong's Motion for Extension of Time. Neither the Uniform Rules nor our rules contemplate a reply to a response to a motion, and as such it will not be considered. The pleadings contained in Armstrong's Motion and the Applicants' Response are sufficient to support a ruling in this instance, and Armstrong has not provided this Commission with any reason to deviate from application of this rationale in this case.

### Ruling

Having reviewed the pleadings, the time frames established in Order No. PSC-06-0819-PCO-EU are both reasonably consistent with those exercised in prior need determination proceedings<sup>1</sup> and are designed to comport with the requirements of Rule 25-22.080, F.A.C. Rule 25-22.080, F.A.C. ("Electrical Power Plant Permitting Proceedings"), provides that the Commission shall set a date for a hearing which shall be within 90 days of receipt of the petition

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<sup>1</sup> For example, see Order No. PSC-06-0521-PCO-EI, issued June 16, 2006, in Docket No. 060424-EI, In re Petition for determination of need for Bobwhite-Manatee 230 kV transmission line in Manatee and Sarasota Counties, by Florida Power & Light Company; and Order No. 06-0190-PCO-EM, issued March 9, 2006, in Docket No. 060155-EM, In re: Petition for determination of need for proposed Stanton Energy Center Combined Cycle Unit B electrical power plant in Orange County, by Orlando Utilities Commission. In their Response, the Applicants cite to these additional examples: Order No. PSC-06-0247-PCO-EC, issued March 23, 2006, in Docket No. 060220-EC, In re: Petition for determination of need for Seminole Generating Station Unit 3 electrical power plant in Putnam County, by Seminole Electric Cooperative, Inc.; Order No. PSC-06-0245-PCO-EI, issued March 23, 2006, in Docket No. 060225-EI, In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company; Order No. PSC-05-0485-PCO-EM, issued May 4, 2005, in Docket No. 050256-EM, 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; Order No. PSC-04-0808-PCO-EI, issued August 19, 2004, in Docket No. 040817-EI, In re: Petition for determination of need for Hines 4 power plant in Polk County by Progress Energy Florida, Inc.; Order No. PSC-04-0325-PCO-EI, issued March 30, 2004, in Docket No. 040206-EI, In re: Petition to determine need for Turkey Point Unit 5 electrical power plant, by Florida Power & Light Company.

for a need determination, and the matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition. The Applicants waived the 90-day limit from December 18, 2006, to January 10, 2007, so that a hearing date could be scheduled on the Commission calendar permitting participation at hearing by the full Commission. The Applicants also waived the 135-day limit from February 1, 2007, to February 13, 2007, to permit additional time for post-hearing briefs by the parties and post-hearing recommendation by staff.

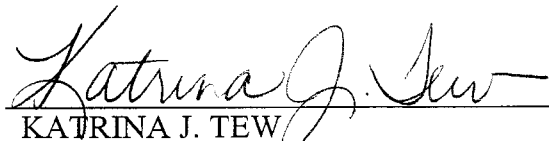
Armstrong's Motion fails to provide support for moving the controlling dates in this matter, including those for hearing, approximately three months beyond the time frame established in Rule 25-22.080, F.A.C. Therefore, Armstrong's request to modify the controlling dates in Order No. PSC-06-0819-PCO-EU to permit intervenors to file testimony and exhibits by January 26, 2007, with a corresponding delay of all other controlling dates, is denied. However, there is some flexibility within the current schedule for filing intervenor testimony and exhibits. In order to afford additional time to intervenors without unduly delaying or prejudicing the other parties and events scheduled for this docket, the time for filing Intervenor Testimony and Exhibits shall be extended to November 2, 2006. All other controlling dates established by Order No. PSC-06-0819-PCO-EU shall remain as currently scheduled.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that Armstrong's Emergency Motion for Extension of Time to File Testimony is denied in part and granted in part, as set forth in the body of this Order. It is further

ORDERED that the controlling date for Intervenor Testimony and Exhibits established in Order No. PSC-06-0819-PCO-EU is modified as set forth in the body of this Order. Order No. PSC-06-0819-PCO-EU is affirmed in all other respects.

By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 26th day of October, 2006.

  
KATRINA J. TEW  
Commissioner and Prehearing Officer

( S E A L )

JSB

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.