

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-06-0954-PCO-EU
ISSUED: November 15, 2006

ORDER GRANTING INTERVENTION

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 November 3, 2006, Mr. Anthony Viegbesie (Viegbesie) requested permission to intervene in this proceeding. In his petition, Viegbesie asserts that he is entitled to intervene in this matter on the following bases: (1) he is a retail electric customer of Tallahassee, and his substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant because Tallahassee's participation in such construction will impact the rates Tallahassee will charge to Viegbesie; (2) the plant is unlikely to be modified to eliminate carbon dioxide emissions, thus recipients of energy from the plant will be assessed a "carbon tax" or other such fees if and when implemented, and such assessments will increase the rates and charges that Viegbesie will be forced to pay Tallahassee for his energy needs; and (3) construction of the plant further will adversely affect the health of Viegbesie and his family as well as the environment in which they live.

Pursuant to Rule 25-22.039, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Rule 28-106.201(2), Florida Administrative Code, and must include allegations sufficient to demonstrate 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. Intervenors take the case as they find it.

To have standing under Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981), the intervenor 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 this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or

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conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Viegbesie asserts that his substantial interests are of sufficient immediacy to entitle him to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With regard to the second and third assertions of standing cited in Viegbesie's petition, Viegbesie's petition fails to state grounds upon which intervention can be granted. In his second assertion of standing, Viegbesie contends that the proposed plant is unlikely to be modified to eliminate carbon dioxide emissions, thus recipients of energy from the plant will be assessed a "carbon tax" or other such fees, which would increase the rates and charges that Viegbesie will be forced to pay Tallahassee. Such assessments are speculative and conjectural, rather than real and immediate in nature. In his third assertion of standing, Viegbesie contends that construction of the plant further will adversely affect the health of Viegbesie and his family, as well as the environment in which they live. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of environmental compliance, however, are under the purview of the Florida Department of Environmental Protection. Therefore Viegbesie's allegation of substantial injury is not of a type or nature which this proceeding is designed to protect.

Viegbesie also asserts that, as a retail electric customer of Tallahassee, his substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant, because Tallahassee's participation in the plant will impact the rates Tallahassee will charge to Viegbesie. In this instance, it appears that Viegbesie's substantial interests may be affected by this proceeding. Therefore, the petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., Viegbesie takes the case as he finds it.

Therefore, it is

ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Mr. Anthony Viegbesie is hereby granted as set forth herein. 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:

Brian P. Armstrong, Esquire
7025 Lake Basin Road
Tallahassee, FL 32312

By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 15th day of November, 2006.



KATRINA J. TEW
Commissioner and Prehearing Officer

(SEAL)

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.