

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-06-0956-PCO-GU  
ISSUED: November 16, 2006

ORDER DENYING PETITION FOR INTERVENTION

On September 19, 2006, the Florida Municipal Power Agency (FMPA), 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 October 30, 2006, Joy Towles-Ezell requested permission to intervene in this docket. On October 31, 2006, the Applicants filed a Response in Opposition to Ms. Towles-Ezell's petition.

In her Petition, Ms. Towles-Ezell states that she is a member of the Sierra Club and has a vital interest in the manner in which new fossil plants are approved in Florida because this process is also the essential forum in which the economic viability of alternative energy resources are determined. In effect, if renewable and alternative energy sources cannot be shown to be a reasonably available alternative to the power plant proposed, under Section 403.519, Florida Statutes, then these resources, for all intents and purposes, fall out of the state's energy portfolio. Ms. Towles-Ezell states that her interests will be directly affected by the Commission's decisions in this docket, thus entitling her to intervene to protect her substantial interests.

In their Response, the Applicants contend that Ms. Towles-Ezell merely alleges that she is a resident of Perry and an advocate for the expansion of renewable and clean energy in North Florida specifically, and generally throughout the state. She does not allege how her interests may be affected in this proceeding or how her interests would be affected beyond those of the general public. She likewise fails to explain how her interests as an "advocate" are of the nature this proceeding is designed to protect. Therefore, the applicants argue the request for intervention should be denied.

Ruling

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), F.A.C., and must include

DOCUMENT NUMBER-DATE

10519 NOV 16 8

FPSC-COMMISSION CLERK

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 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).

Staff counsel has conferred with counsel for Ms. Towles-Ezell and has confirmed that she does not receive electric service from any of the Applicants. She does not allege an interest or injury which is beyond that which may be held by a member of the general public, and her petition fails to allege a basis upon which intervention may be granted. Having reviewed the pleadings, I find that Ms. Towles-Ezell has not adequately alleged that she will suffer injury in fact which is of sufficient immediacy to entitle her to a Section 120.57, Florida Statutes, hearing, or that her alleged injury is of a type that this proceeding is designed to protect. Therefore, her petition for intervention is denied without prejudice.

By Order No. PSC-06-0898-PCO-EU, issued October 26, 2006, the Sierra Club, Inc., was granted intervention in this matter. As a member of the Sierra Club, Ms. Towles-Ezell will have the benefit of representation in this matter through that organization. Additionally, Ms. Towles-Ezell, as well as any other member of the public who is not a party to the need determination proceeding, will be afforded the opportunity to present testimony concerning this matter at the formal administrative hearing scheduled on January 10, 2007.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the Petition to Intervene by Joy Towles-Ezell is denied without prejudice.

By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 16th day of November, 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.