

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-06-0957-PCO-EU
ISSUED: November 16, 2006

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR 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 October 31, 2006, Dianne V. Whitfield, Carole E. Taitt, and John Carl Whitton, Jr. requested permission to intervene in this docket. On November 8, 2006, the Applicants filed a Response in Opposition to the petition for intervention.

In support of their request, the petitioners state as follows: Petitioner Whitton is a retail electric customer of Tallahassee, and his interests will be directly affected by the Commission's decisions in this case. Petitioners Taitt and Whitfield are residents of Taylor County, in proximity to the proposed electric plant. Petitioners Taitt and Whitfield state that they have a substantial interest in whether a coal plant is the most cost-effective alternative as well as in the use of alternate energy sources. Petitioners Taitt and Whitfield also contend that this docket is the only opportunity where the type of electricity generating facility to be located in Taylor County is to be determined, and because the Commission's determination also includes the appropriateness of the siting of the plant, they are entitled to intervene to protect their substantial interests.

In their Response, the Applicants state their opposition to granting intervention for Petitioners Taitt and Whitfield (no objection to Petitioner Whitton's request for intervention is stated). The Applicants contend that Petitioners Taitt and Whitfield allege a general interest in how energy services are provided in Florida, but fail to allege any injury in fact and do not explain how any interests they allege are beyond those of the general public. The Applicants further contend that Petitioners Taitt and Whitfield fail to explain how their interests as advocates of energy efficiency issues are of the nature this proceeding is designed to protect. Therefore, the Applicants argue the request for intervention by Petitioners Taitt and Whitfield should be denied.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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 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).

Mr. Whitton 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. It appears that his substantial interests may be affected by this proceeding. Therefore, the petition shall be granted with respect to Mr. Whitton. Pursuant to Rule 25-22.039, F.A.C., Mr. Whitton takes the case as he finds it.

The basis for Petitioners Taitt and Whitfield's request for intervention is that they are residents of Taylor County, that they have an interest in whether a coal plant is the most appropriate and cost-effective alternative as well as in the use of alternate energy sources, and because the Commission's determination also includes the appropriateness of the siting of the plant. Staff counsel has conferred with counsel for Petitioners Taitt and Whitfield and has confirmed that they do not receive electric service from any of the Applicants. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant; however, issues relating to the siting of the plant are under the purview of the Florida Department of Environmental Protection.

Having reviewed the pleadings, I find that Petitioners Taitt and Whitfield have not adequately alleged that they will suffer injury in fact which is of sufficient immediacy to entitle them to a Section 120.57, Florida Statutes, hearing, or that their alleged injury is of a type that this proceeding is designed to protect. Therefore, the petition for intervention is denied without prejudice with respect to Ms. Taitt and Ms. Whitfield. Ms. Taitt and Ms. Whitfield, as well as any other members of the public who are not a party to the need determination proceeding, will

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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

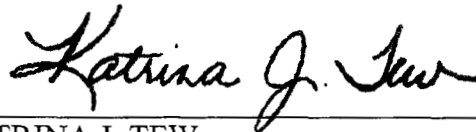
ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the Petition to Intervene is granted with respect to Mr. John Carl Whitton, Jr. It is further

ORDERED that the Petition to Intervene with respect to Ms. Dianne V. Whitfield and Ms. Carole E. Taitt is denied without prejudice. 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:

Jeanne Zokovitch Paben, Esq.
Brett M. Paben, Esq.
WildLaw
1415 Devils Dip
Tallahassee, FL 32308-5140
Telephone: (850) 878-6895
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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.