

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule REF-1, by Gulf Power Company.

DOCKET NO. 070232-EQ
ORDER NO. PSC-07-0489-PCO-EQ
ISSUED: June 11, 2007

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

Rules 25-17.200 through 25-17.310, Florida Administrative Code, require investor-owned electric utilities to file a standard offer contract for renewable generation facilities. On April 2, 2007, Gulf Power Company (Gulf) filed its Petition for approval of its Standard Offer Contract with accompanying tariff sheets.

Petition for Intervention

By petition dated May 3, 2007, Bay County, Florida filed a Petition to Intervene (Petition) in this docket. According to its Petition, Bay County owns and operates an existing power generation facility within the service area of Gulf, which is fueled by solid waste and meets the definition of a "Renewable Generating Facility" under Rule 25-17.210(1), Florida Administrative Code. As the owner of the Biomass Facility, Bay County is pursuing the sale of some or all of the electrical output from the Biomass Facility to Gulf, and anticipates that the standard offer contract and related tariffs that are the subject of this docket may govern such sale of electrical output. According to Bay County, Gulf's proposed Standard Offer Contract includes terms and conditions which will make it difficult for Bay County to execute in the form as filed by Gulf. Further, Bay County alleges that if the Standard Offer Contract is approved, Bay County may be precluded from selling renewable energy due to certain terms contained in Gulf's proposed Standard Offer Contract. For those reasons, Bay County contends that its injury is immediate and is of the type which is required in order to intervene in this proceeding. No party filed a response to Bay County's Petition.

Standards of Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, 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 days before an evidentiary 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 by the proceeding. Intervenors take the case as they find it.

DOCUMENT NUMBER-DATE

04663 JUN 11 8

FPSC-COMMISSION CLERK

To have standing, the intervenor must meet the two prong standing test in 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).

Analysis & Ruling

It appears that Bay County meets the two prong standing test in Agrico, in that it is an owner and operator of a Renewable Generating Facility as defined by Rule 25-17.210(1), Florida Administrative Code, is currently pursuing the sale of some or all of the electrical output from its facility to Gulf, and as such, is a potential signatory to Gulf's proposed Standard Offer Contract and associated tariffs. Accordingly, Bay County's Petition to Intervene is granted. Pursuant to Rule 25-22.039, Florida Administrative Code, Bay County takes the case as it finds it.

Therefore, it is


ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Bay County, Florida, is hereby granted. 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:

W. Christopher Browder, Esquire
Thomas A. Cloud, Esquire
Gray Robinson, P.A.
301 East Pine Street, Suite 1400
P.O. Box 3068
Orlando, Florida 32802-3068
(407) 843-8880 Phone
(407) 244-5690 Facsimile

Terrell K. Arline, Esquire
County Attorney
810 West 11th Street
Panama City, Florida 32401
(850) 784-6112 Phone
(850) 784-4026 Facsimile

By ORDER of the Florida Public Service Commission, this 11th day of June, 2007.



ANN COLE
Commission Clerk

(S E A L)

LAH

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 Office of Commission Clerk, 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.