

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.

DOCKET NO. 070234-EQ

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ

In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

DOCKET NO. 070236-EQ
ORDER NO. PSC-08-0020-PCO-EQ
ISSUED: January 7, 2008

ORDER GRANTING INTERVENTION

Pursuant to Order No. PSC-07-0962-PCO-EQ, issued December 3, 2007, this matter has been scheduled for a hearing April 10-11, 2008. On August 9, 2007, the Solid Waste Authority of Palm Beach County, Florida (SWA) filed a Petition for Leave to Intervene as a full party in interest to the above referenced dockets.¹

Petition for Intervention

According to the SWA, it disposes of approximately 1.3 million tons of municipal solid waste annually. It states that approximately 800 thousand tons of this total is delivered to its waste-to-energy facility, and that it is a Renewable Energy Facility under Florida law and a Qualifying Facility under Federal Law.

In its petition, the SWA states that its facility fires the Refuse Driven Fuel (RDF) in steam boilers to produce steam for use in the waste-to-energy facility's 62 mW steam turbine-generator, thereby generating approximately 450 thousand mWh of renewable electricity annually, the majority of which is sold to Florida Power and Light Company (FPL), pursuant to a contract for firm energy and capacity. The SWA reports that the contract expires in 2010, thereby allowing the SWA to sell capacity and/or energy beginning after expiration, pursuant to the Standard Offer Contracts that are the subject of these proceedings.

¹ The Solid Waste Authority of Palm Beach County also filed a motion to intervene in related Docket No. 070232-EQ, In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Gulf Power Company. Docket No. 070232-EQ has since been closed for petitioner's failure to file an amended petition pursuant to Order No. PSC-07-0924-CO-EQ, issued November 19, 2007.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The SWA declares that in addition to the existing facility, there is a possibility that the SWA's existing waste-to-energy facilities may be expanded, or that the SWA would construct one or more additional renewable energy facilities - such as a landfill gas facility. The SWA also states that in addition to generating and selling electricity produced by the waste-to-energy facility, the SWA and Palm Beach County consume substantial quantities of electricity that is purchased from FPL.

No party has objected to the SWA's Motion for Intervention, and the time for doing so has expired.

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 (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, the intervenor must meet the two prong standing test in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show (1) that he will suffer an 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. 3d 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 & Rulings

It appears that the SWA meets the two prong standing test in Agrico. The SWA is a renewable energy facility as defined by Commission rule, and as such, has an interest in the outcome of this proceeding as a potential supplier of renewable energy pursuant to the standard offer contracts. Should the standard offer contracts deviate from the Commission's rules, the intervenor will likely suffer.

The SWA's petition for leave to intervene could also be interpreted as challenging the rule requirements as to how utilities should create and submit their Ten Year Site Plan (TYSP),

and how the Commission is to consider the TYSP pursuant to Rule 25-22.701, F.A.C. The petition could also be interpreted as challenging the prices established for the standard offer contract based on a utility's TYSP as required by Rule 25-17.250, F.A.C. The SWA is on notice that rule challenges or challenges to the TYSP do not properly lie in this docket, and such matters will not be entertained in this proceeding. See Order No. PSC-07-0956-PCO-EQ.

The SWA is reminded that as an intervenor, the SWA takes this case as it finds it.

Therefore, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the Petition to Intervene filed by the Solid Waste Authority of Palm Beach 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:

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By ORDER of the Florida Public Service Commission, this 7th day of January, 2008.



NANCY ARGENZIANO
Commissioner and Prehearing Officer

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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.