

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Polk 2-5  
combined cycle conversion, by Tampa Electric  
Company.

DOCKET NO. 120234-EI  
ORDER NO. PSC-12-0627-PCO-EI  
ISSUED: November 21, 2012

ORDER GRANTING INTERVENTION

On November 14, 2012, DeSoto County Generating Company, LLC (DeSoto) filed a Petition to Intervene in this docket. DeSoto asserts that it is entitled to intervene in the docket because it was a qualified bidder in the 2017 Power Generation Request for Proposals (RFP) from Tampa Electric Company (TECO), and it was not selected to supply power to TECO. DeSoto alleges that the outcome of this proceeding will immediately and substantially affect its ability to provide electric capacity and energy to TECO, and this is specifically a type of injury against which the proceeding is designed to protect.

TECO did not file an objection to DeSoto's Petition for Intervention.

Standard for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code (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, the intervenor must meet the two-prong standing test set forth 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, F.S., 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).

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FPSC-COMMISSION CLERK

Ruling

DeSoto alleges that it is entitled to intervene in this docket, and TECO has not opposed the intervention. Furthermore, Rule 25-22.082(16), F.A.C., contemplates that potential suppliers of capacity who were participants in the selection process may contest the outcome in a power plant need determination proceeding. Therefore, I find it appropriate to grant the Petition to Intervene.

Per Rule 25-22.039, F.A.C., intervenors must take the case as they find it. Intervenors in this proceeding are directed to comply with all standards, rules, statutes, and procedures that apply to and are expected of all other parties, and shall be required to stay within the scope of this proceeding as it has been and will be established.

Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that the Petition to Intervene filed by DeSoto County Generating Company, LLC, is hereby granted as set forth in the body of this Order. It is further

ORDERED that DeSoto County Generating Company, LLC, takes the case as it finds it. 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:

Robert Scheffel Wright, Attorney at Law  
John T. LaVia, III, Attorney at Law  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

Counsel  
c/o DeSoto County Generating Company, LLC  
1700 Broadway, 35th Floor  
New York, New York 10019  
Telephone (212) 547-3456  
Facsimile (212) 615 3440

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 21st day of November, 2012.



ART GRAHAM  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 25-22.0376, 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.