

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Robert D. Reynolds and Julianne C. Reynolds against Utility Board of the City of Key West, Florida d/b/a Keys Energy Services regarding extending commercial electrical transmission lines to each property owner of No Name Key, Florida.

DOCKET NO. 120054-EM
ORDER NO. PSC-13-0159-PCO-EM
ISSUED: April 19, 2013

ORDER GRANTING RENEWED PETITION TO INTERVENE

Background

On March 5, 2012, Robert D. Reynolds and Julianne C. Reynolds (the Reynolds), the owners of residential property on No Name Key, Florida, filed a complaint against the Utility Board of the City of Key West, Florida, d.b.a. Keys Energy Services (Keys Energy), for failure to provide electric service to their residence as required by the terms of a Territorial Agreement, which the Commission approved in 1991.¹ The Reynolds filed an amended complaint against Keys Energy on March 13, 2013, and a second amended complaint to correct a scrivener's error on March 20, 2013. The amended complaint asserts that the Commission has exclusive jurisdiction to interpret the territorial agreement it approved and determine whether property owners on No Name Key are entitled to electric service from Keys Energy. Essentially, the amended complaint asks the Commission to order Keys Energy to provide electric service to the Reynolds, as well as other No Name Key property owners who request it, and to determine that Monroe County (County)² cannot prevent provision of commercial electric service to No Name Key by the application of its local comprehensive plan or other ordinances.

Petition to Intervene and Objections

After the Reynolds filed their amended complaint, No Name Key Property Owners Association, Inc. (Association) filed a Motion for Leave to Renew Petition to Intervene on March 20, 2013. The Association's renewed petition incorporated its original petition to intervene, which was granted by Order No. PSC-12-0472-PCO-EM, issued September 12, 2012. The Association claims that its members have a substantial interest in this proceeding because they wish to have commercial electric service provided to No Name Key from Keys Energy and they have invested substantial funds to pay for the construction of Keys Energy's facilities for that purpose.

¹ Order No. 25127, issued September 9, 1991, in Docket No. 910765-EU, In re: Joint Petition of Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West for approval of a territorial agreement.

² Monroe County was granted intervention in this proceeding on May 22, 2012, by Order No. PSC-12-0247-PCO-EM.

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FPSC-COMMISSION CLERK

On April 1, 2013, the County filed a Motion to Dismiss the Association's renewed petition, arguing that the Association does not have standing to enforce the terms of Order No. 25127, which approved the Territorial Agreement mentioned above, and which is central to the resolution of this case. Monroe County's argument is the same argument it has raised in its Motion to Dismiss the Reynolds' complaint, which the Commission will address at its May 14, 2013, Agenda Conference.

Standards 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 days before the evidentiary hearing, conform with Rule 28-106.201(2), F.A.C., and 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.

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 that (1) they will suffer injury in fact which is of sufficient immediacy to entitle them to a Section 120.57, F.S., hearing, and (2) the 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).

The test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Ruling

I find that the Association is entitled to renew its intervention in this proceeding, notwithstanding the County's objection. The interests of its members in the provision of electric service to No Name Key by Keys Energy, for which they have expended considerable resources

for many years, clearly will be substantially affected by the Commission's decision on the remaining issues in the case. It is equally clear that the case now before the Commission, in which it will determine whether commercial electric service should be provided to the island, is a proceeding designed to protect the Association's members' interest. Therefore, the Association has met the standards for intervention at this time, subject to the Commission's decision on the County's outstanding Motion to Dismiss the Reynolds' complaint.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Renewed Petition to Intervene by the No Name Key Property Association, Inc. is granted. It is further

ORDERED that the Intervenors take the case as they find 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:

Andrew M. Tobin, Esq.
Counsel for No Name Key Property Owners Association, Inc.
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By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 19th day of April, 2013.



EDUARDO E. BALBIS
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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.

MCB

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.