

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Okeechobee Clean Energy Center Unit 1, by
Florida Power & Light Company.

DOCKET NO. 150196-EI
ORDER NO. PSC-15-0494-PCO-EI
ISSUED: October 22, 2015

ORDER GRANTING INTERVENTION TO
ENVIRONMENTAL CONFEDERATION OF SOUTHWEST FLORIDA

By petition, dated October 6, 2015, the Environmental Confederation of Southwest Florida (ECOSWF) has requested permission to intervene in this proceeding. In its Petition, ECOSWF states that it has over 100 members consisting of business entities, other organizations, and individuals that reside in Florida Power & Light's (FPL) service territory. In addition, ECOSWF was organized for the purpose of conserving the natural resources of Southwest Florida, implementing energy efficient improvements and alternatives, and engaging in actions in the furtherance of energy conservation and alternative energy source development.

ECOSWF contends the substantial interests of its members will be affected in this proceeding. ECOSWF and its members advocate for all cost-effective energy efficiency measures that cost less than non-renewable electricity generation. In its Petition, ECOSWF asserts the Commission will issue an order in this docket determining the need of a 1,622 MW combined-cycle power plant in Okeechobee County, estimated to cost \$1.196 Billion. ECOSWF contends FPL will ultimately recover the costs, and a return on investment, from ratepayers including ECOSWF's members. Further, ECOSWF argues its members would be directly affected by the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives, and the health and environmental consequences of energy decisions that disproportionately rely on fossil fuels.

ECOSWF asserts this type of proceeding is designed to protect ECOSWF and its members' substantial interests. ECOSWF argues that before the Commission makes a decision, FPL should be required to meaningfully evaluate alternatives and the Commission and the interested public should have the opportunity to examine and provide testimony on FPL's evaluation of these strategies. Additionally, ECOSWF argues the failure to require a rigorous assessment of such strategies will result in unnecessary premiums for fossil fuel generation for Florida's ratepayers, including ECOSWF's members.

No response was filed in opposition to this request.

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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 25-106.201, (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....

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 (Fla. 2nd DCA 1981). The intervenor must show (1) he or she will suffer injury in fact which is of sufficient immediacy to entitle the intervenor to a Section 120.527, 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.

Analysis and Ruling

It appears that ECOSWF’s members meet the two-prong standing test in Agrico as well as the three-prong associational standing test in Florida Home Builders. ECOSWF states that it has over 100 members consisting of business entities, other organizations, and individuals that are FPL’s customers. ECOSWF asserts that its members’ substantial interests will be affected by the Commission’s decision in this docket and that these interests are the type this proceeding is designed to protect. Therefore, ECOSWF meets the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, ECOSWF asserts that over 100 of its members will bear the costs to of FPL’s proposed power plant if the Commission determines there is a need. Therefore, it appears a substantial number of ECOSWF’s members will be directly affected by this proceeding. With respect to the second prong, the subject matter of the proceeding appears to be within ECOSWF’s general scope of interest and activity. ECOSWF was organized to work to conserve the natural resources of Southwest Florida,

implement energy efficient improvements and alternatives, and to engage in actions in the furtherance of energy conservation and alternative energy source development. Additionally, ECOSWF and its members advocate for all cost-effective energy efficient measures that cost less than non-renewable electricity generation. Finally, regarding the third prong of the associational standing test, ECOSWF seeks intervention in this docket to represent its interests and the interests of its members, and to provide the Commission with expert testimony and opinion about the energy efficiency and renewable energy options for meeting Florida's energy needs. ECOSWF is authorized by its bylaws to represent its interests and the interests of its members in legal actions and asserts that no other party in this docket can adequately represent these interests. Therefore, the relief requested appears to be the type that is appropriate for ECOSWF to request from the Commission on behalf of its members.

Having reviewed the Petition, it appears that the substantial interests of ECOSWF and its members may be affected by this proceeding. Therefore, ECOSWF's motion to intervene is hereby granted. Pursuant to Rule 25-22.039, F.A.C., ECOSWF takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by the Environmental Confederation of Southwest 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 Commissioner Ronald A. Brisé, as Prehearing Officer, this 22nd day of October, 2015.



RONALD A. BRISE
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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.