BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Seminole combined cycle facility, by Seminole Electric Cooperative, Inc.	DOCKET NO. 20170266-EC
In re: Joint petition for determination of need for Shady Hills combined cycle facility in Pasco County, by Seminole Electric Cooperative, Inc. and Shady Hills Energy Center, LLC.	DOCKET NO. 20170267-EC ORDER NO. PSC-2018-0063-PCO-EC ISSUED: January 24, 2018

ORDER GRANTING INTERVENTION TO QUANTUM PASCO POWER, L.P.

On December 21, 2017, the above referenced dockets were opened for this Commission's review of the Petition for Determination of Need for Seminole Combined Cycle Facility (Seminole Facility), filed by Seminole Electric Cooperative, Inc. (Seminole) and the Joint Petition for Determination of Need for Shady Hills Combined Cycle Facility (Shady Hills Facility) in Pasco County, filed by Seminole and Shady Hills Energy Center, LLC (Shady Hills). Docket Nos. 20170266-EC and 20170267-EC were consolidated for hearing purposes by Order No. PSC-2018-0018-PCO-EC (Order Establishing Procedure), filed on January 5, 2018. The consolidated dockets have been set for hearing on March 21 and 22, 2018.

Motion for Intervention

By motion dated January 17, 2018, Quantum Pasco Power, L.P. (Quantum) has requested permission to intervene in the Proceedings (Motion). Quantum states that it is the owner of the Pasco Power Plant, a dual-fueled combined cycle electrical power plant located in Dade City, Florida. Quantum also states that the company participated in Seminole's March 1, 2016 Request for Proposal (RFP) process, in which Seminole sought up to 1,000 megawatts of firm capacity. At the conclusion of the RFP process, Quantum was not selected as a winning bidder.

Quantum avers that it should be granted intervention because it will suffer an immediate injury if the petition and joint petition are granted by the Commission. Quantum argues that if the requests are granted, it will be foreclosed from providing firm capacity to Seminole, and the capacity of its existing Pasco Power Plant will be duplicated. Quantum states that if it is not able to enter into a feasible power supply contract or asset sale arrangement with a viable counter-party, then it will likely have to close the Pasco Power Plant and attempt to use its components elsewhere to minimize losses.

Quantum further contends that as an established power supplier within the Florida grid, it has a substantial interest in having the Commission enforce its jurisdiction under Section 366.04(5), Florida Statutes (F.S.), to avoid the uneconomic duplication of generation facilities. Quantum argues that the state of Florida's policy is to strongly discourage construction of

unnecessary generating facilities, and that the avoidance of unnecessary construction is a relevant factor to be considered in the Commission's determination of the proceedings. Quantum also states that its proposal to Seminole is more cost-effective than the construction of the Shady Hills Facility. Quantum asserts that because its facility is already built, the pricing is already known, and thus Quantum can avoid the risk of construction costs exceeding budget when compared to the Shady Hills Facility.

Quantum also notes that although Seminole is not subject to Rule 25-22.082 ("Bid Rule"), Florida Administrative Code (F.A.C.), Seminole did issue an RFP, and the same public policy reasons that underlie the Bid Rule's granting of standing to competitors in an RFP process should be applicable in this case. Quantum advises that even before the Bid Rule was promulgated, the Commission granted intervention in a need proceeding to competitors who participated in an RFP process.[1] According to Quantum, in Order No. PSC-92-1355-FOF-EQ the Commission noted that there is a "limited need for additional capacity and energy in the state of Florida" and that the competitors had shown their substantial interests were adversely affected in a proceeding where the competitors would not be able to construct their proposed projects if the need determination were granted to the original winning bidder.[2]

On January 19, 2018, Seminole filed a response to the Motion. Seminole stated they take no position on the Motion, subject to proof of standing at the hearing. By taking no position on the Motion, Seminole does not agree with or concede to any of the allegations asserted therein. Furthermore, Seminole disputes the appropriateness of the issues proposed by the Intervenors that are in addition to the issues listed in Attachment A of the Order Establishing Procedure.

Standards for Intervention

Pursuant to Rule 28-106.205, F.A.C.,

> Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good casue shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

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) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the

[1] Order No. PSC-92-1355-FOF-EQ, issued on November 23, 1992, in Docket No. 920520-EQ, In re: Joint Petition to determine need for electric power plant to be located in Okeechobee County by Florida Power & Light Company and Cypress Energy Partners, Limited Partnership.
[2] Id. at 3-4.

test addresses the degree of injury. The second addresses 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

Based upon a review of the materials provided, Quantum meets the two-prong standing test in Agrico. Quantum meets the first prong of Agrico because as an unsuccessful bidder, its injury in fact is that it could have been selected as the bidder to partner with Seminole, but instead was not even though Quantum contends that its proposal was more cost-effective. Thus, if the need determination is granted, Shady Hills will provide Seminole's firm capacity and Quantum will be precluded from this opportunity.

Quantum meets the second prong of Agrico because Section 403.519(3), F.S., provides that, among other things, in a need determination proceeding the Commission must take into account "whether the proposed plant is the most cost-effective alternative available." As a competitor and participant in the RFP process, Quantum has the ability to provide testimony regarding the cost-effectiveness of alternate proposals in these proceedings. Thus, per Section 403.519(3), F.S., need determinations are the appropriate forum for Quantum to argue that there are more cost-effective alternatives available to the Seminole Facility and Shady Hills Facility.

Furthermore, even though Seminole is not a public utility and is not required to follow Rule 25-22.082 ("Bid Rule"), F.A.C., Seminole chose to issue an RFP in this instance, and under the Bid Rule an unsuccessful bidder that participated in the RFP process can seek intervention in a need determination proceeding related to the RFP. As a participant in the RFP process, Quantum would have standing to intervene if the Bid Rule were applicable. Also, as noted in Intervenors' Motion, the Commission has previously granted standing to an unsuccessful competitor prior to the promulgation of the Bid Rule.[3] Thus it is appropriate to grant intervention, in following the spirit of the Bid Rule and given the Commission's historic record of allowing competitors that were outbid to intervene in a need proceeding. It is also worth noting that it is in the best interest of Seminole's cooperative members and their member-consumers for Quantum to intervene in these proceedings, to ensure that Seminole did in fact choose the most cost-effective alternative to provide firm capacity.

Because Quantum meets the two-prong standing test established in Agrico, it appears that Quantum's substantial interests may be affected by this proceeding. As stated above, opposing counsel took no position on the Motion, subject to proof of standing at hearing. Therefore, the Motion to Intervene shall be granted for Docket Nos. 20170266-EC and 20170267-EC. Notwithstanding granting intervention, I remind Quantum that issues shall be limited to those appropriate to the scope of a determination of need. Quantum takes the case as it finds it.

[3] See Document No. 00375-2018, submitted on January 17, 2018, in Docket No. 20170266-EC, at pages 10-11.

Therefore, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Quantum is hereby granted. It is further

ORDERED that Quantum Pasco Power, L.P. will be granted intervention in both Docket Nos. 20170266-EC and 20170267-EC. 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 Gary F. Clark, as Prehearing Officer, this 24th day of January, 2018.

GARY F. CLARK
Commissioner and Prehearing Officer
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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.