

**ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In Re: Joint Petition for
Approval of Standard Offer
Contracts of Florida Power
Corporation and Auburndale
Power Partners, Limited
Partnership**
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Docket No. 940819-EQ

Filed: November 18, 1994

MOTION TO DISMISS PETITION FOR FORMAL PROCEEDINGS

LFC No. 47 Corp. ("LFC 47"), 3 Radnor Corporate Center, 100 Matsonford Road, Radnor, Pennsylvania 19087, pursuant to Rule 25-22.037, Florida Administrative Code, hereby files this Motion to Dismiss the Petition for Formal Proceedings filed by Ann Smith.

In support of its motion, LFC 47 states the following:

BACKGROUND

1. On October 24, 1994, the Florida Public Service Commission ("FPSC" or "Commission") issued Notice of Proposed Agency Action ("PAA") Order No. PSC-94-1306-FOF-EQ in Docket No. 940819-EQ approving the Joint Petition for Expedited Approval of Contract Modifications ("Joint Petition") of Florida Power Corporation ("FPC") and Auburndale Power Partners, Limited Partnership ("APP"). The PAA Order approved for cost recovery purposes the assignment two of LFC 47's Standard Offer Contracts with FPC to APP and the administration of those contracts from APP's Auburndale facility.

2. On November 14, 1994, Ann Smith filed a Petition for Formal Proceedings alleging that she is a resident of Jefferson County and that her substantial interest will be affected because the assignment would cause an increase in utility rates in Madison and

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FPSC-RECORDS/REPORTING

Jefferson Counties and a loss of local jobs and local economic benefits. Petitioner also asserts that a Standard Offer Contract is not authorized for a power facility which produces more than 75 megawatts and the LFC Standard Offer Contracts cannot be assigned to APP because its power facility is more than 75 megawatts.

LEGAL ARGUMENT

3. FPSC Rule 25-22.029(4) provides that:

One whose substantial interest may or will be affected by the Commission's proposed action may file a petition for a section 120.57 hearing in the form provided by Rule 25-22.036.

FPSC Rule 25-22.036(9)(b) states:

Where a Petition on Proposed Agency Action has been filed, the Commission may:

- (1) Deny the petition if it does not adequately state a substantial interest in the Commission determination . . .

4. A Petitioner's substantial interest must be adversely affected in order to provide standing to initiate a formal proceeding. Agrico Chem. Co. v. Department of Environmental Regulation 406 So.2d 478 (Fla. 1st DCA 1981), review denied 415 So.2d, 1361, Fla. 1982, squarely addresses the issue of standing in administrative proceedings. Agrico states that to have standing to initiate a formal administrative proceeding an individual must show (1) that he or she will suffer injury in fact which is of sufficient immediacy to entitle him or her to a formal proceeding and (2) that the injury is of a type

or nature which that proceeding is designed to protect.

5. The Petitioner has not alleged an injury in fact of sufficient immediacy that would entitle her to a formal administrative hearing. The Petitioner states only that she is a resident of Jefferson County with no direct relationship to either FPC, LFC or APP. At a minimum to have standing the Petitioner should be a ratepayer of a regulated utility, in this case, Florida Power Corporation. There is no such allegation in the Petition.

6. Petitioner alleges the assignment will result in an increase in rates in Madison and Jefferson Counties. Assuming the Petitioner is a ratepayer there is no basis to conclude that the PAA Order approving the assignment of the Standard Offer Contracts will cause an increase in rates. In fact, as stated in the Joint Petition and the PAA Order there will be no change in the pricing provisions of the Standard Offer Contracts as a result of the assignment which could trigger an increase in rates.

7. Further, there must be a direct nexus between the FPSC's Order approving the Joint Petition and the ratepayer's payment of increased rates. See In Re: Petition for limited proceeding to implement water conservation plan in Seminole County by Sanlando Utilities Corporation, 94 F.P.S.C. 8:256,260, Docket No. 930256-WS, Order No. PSC-94-0987-FOF-WS (Aug. 15, 1994). The Petition does not allege such a direct connection. In order to effect a change in rates, FPC would have to apply to the FPSC for a rate increase pursuant to Section 366.06, Florida Statutes. Therefore, the PAA Order approving the Joint

Petition, without a subsequent rate case, could not result in an increase in rates to FPC's customers. It is highly unlikely and at best remote that FPC would request an increase in rates as a direct result of the Joint Petition. There is no immediate injury that could not be adequately and properly addressed in a rate case proceeding, if FPC believed a rate increase was necessary.

8. The Petitioner also claims that her substantial interest will be affected because there will be a loss of local jobs and local economic benefits. Petitioner apparently assumes that it is the intent to close the plants as a result of this transfer. The Petitioner's concerns are unsubstantiated and speculative. There is no definitive statement that the plants will be closed and as indicated in response to inquiry from the Commission, it is the intent that the plants remain operational.

9. A proceeding before the Florida Public Service Commission approving modifications to Standard Offer Contracts is not the type designed to protect specific jobs or boost the local economy. It is the responsibility of the Commission to protect ratepayers of regulated utilities from potential abuses which may occur as a result of granting utilities monopoly authority to provide service. Protection of local jobs and the economy is worthy of consideration but is not within the direct purview of the Commission's regulatory authority.

10. Furthermore, it is unsubstantiated and speculative at best as to whether the PAA Order approving the Joint Petition would lead to a loss of jobs which would adversely

affect the local economy.

11. Finally, the Petitioner asserts that the LFC's Standard Offer Contracts cannot be assigned to Auburndale Power Partners because APP's power facility is more than 75 megawatts. It appears that the Petitioner mistakenly believes that capacity assigned to a Standard Offer Contract cannot be reassigned or transferred to a "Negotiated Contract". There is no such prohibition in Federal or State law.

COSTS AND ATTORNEYS FEES

12. Section 120.59(6), Florida Statutes addresses the award of attorneys fees and costs from a non-prevailing adverse party. Costs and attorney fees shall be awarded to the prevailing party where the non-prevailing adverse party has been determined to have participated in the proceeding for an "improper purpose". "Improper purpose" is defined in subsection 120.59(6)(E1) as:

Participation in a proceeding pursuant to Section 120.57(1), primarily to harass or to cause unnecessary delay or for frivolous purposes or to needlessly increase the cost of licensing or securing the approval of an activity (Emphasis added).

13. Because the Petitioner apparently is not a ratepayer of FPC and her allegations are largely unsubstantiated and purely speculative, it would appear that the only reason the Petition was filed was to cause delay and to unnecessarily and needlessly increase the cost of securing the approval of the Joint Petition. Accordingly, the Commission should find that the Petitioner has participated or filed her Petition for formal proceedings for an improper purpose and as such is liable for costs and attorney's fees pursuant to Section

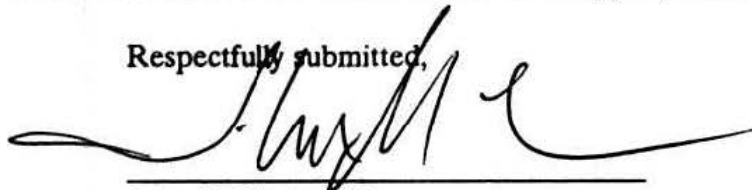
120.59(6), Florida Statutes.

REQUEST FOR EXPEDITED TREATMENT

14. Finally, LFC respectfully request the FPSC to address this matter on an expedited basis. This matter was initiated before the Commission on April 19, 1994 and as stated in the Joint Petition for Expedited Approval of Contract Modifications, time is of the essence in preserving the validity and viability of the transaction. LFC is requesting expedited approval of the assignment, otherwise LFC will be required to complete certain alterations to the existing facilities within an extremely limited time frame which may preclude LFC from meeting its January 1, 1995 commercial in service date under the current Standard Offer Contracts.

WHEREFORE, LFC respectfully requests the Commission to (1) dismiss the Petition for Formal Proceedings filed by Ann Smith because the Petitioner lacks the requisite standing and (2) to grant such other relief as the Commission deems appropriate.

Respectfully submitted,



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Attorneys for LFC No. 47 Corp.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Certified Mail to Ann Smith, Post Office Box 1126, Monticello, Florida 32344; and by United States Mail to Richard Benton, Esq., 3837-A Killearn Court, Tallahassee, Florida 32308; D. Bruce May, Holland & Knight, Post Office Drawer 810, Tallahassee, Florida 32302; Robert F. Riley, Esq., Auburndale Power Partners, Limited Partnership, 12500 Fair Lakes Circle, Suite 420, Fairfax, Virginia 22033; J. Bradford Hines, Esq., Florida Power Corporation, office of General Counsel, Post Office Box 14042, St. Petersburg, Florida 33733; and Martha Brown, Staff Counsel, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0850; this 18th day of November, 1994.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Marks, III", written over a horizontal line.

John R. Marks, III