

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

JULY 24, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYG)

FROM: DIVISION OF ELECTRIC & GAS (MAKIN; BULECZA-BANKS, DILLMORE) *DFD* *WRB*  
DIVISION OF LEGAL SERVICES (KEATING) *WCA* *for RE* *JDJ*

RE: DOCKET NO. 970115-GU - PETITION FOR LIMITED PROCEEDING TO RESTRUCTURE RATES BY ST. JOE NATURAL GAS COMPANY, INC.

AGENDA: 08/05/97 - REGULAR AGENDA - MOTION TO DISMISS - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\EAG\WP\970115GU.RCM

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CASE BACKGROUND

On January 27, 1997, St. Joe Natural Gas Company (St. Joe) filed a Petition for Limited Proceeding to Restructure Rates. By Order No. PSC-97-0526-FOF-GU, issued May 7, 1997, as proposed agency action (PAA Order), the Commission approved St. Joe's rate restructuring proposal. The PAA Order includes language concerning the contractual relationship between St. Joe and Florida Coast Paper Company, L.L.C. (FCPC). There is currently a dispute between St. Joe and FCPC concerning FCPC's obligation to perform under certain contracts entered into by St. Joe and St. Joe Forest Products, a company purchased by FCPC.

On May 28, 1997, FCPC filed a Petition on Proposed Agency Action (Petition) and Request for Amendment or Clarification. Through these pleadings, FCPC requested that the Commission amend its PAA Order to remove the language concerning its contractual relationship with St. Joe or, alternatively, that the Commission clarify that it did not intend to make any findings or express any views regarding the contractual relationship between the companies. St. Joe filed a Motion to Dismiss FCPC's Petition and Request for

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Amendment of Clarification on June 23, 1997. FCPC timely filed a response to St. Joe's Motion to Dismiss.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant St. Joe Natural Gas Company's Motion to Dismiss Florida Coast Paper Company's Petition on Proposed Agency Action and Request for Amendment or Clarification?

**RECOMMENDATION:** Yes, the Commission should grant St. Joe Natural Gas Company's Motion to Dismiss. Florida Coast Paper Company's Petition on Proposed Agency Action and Request for Amendment or Clarification, when viewed in the light most favorable to Florida Coast, fails to state a cause of action upon which the Commission may grant relief.

**STAFF ANALYSIS:** St. Joe bases its Motion to Dismiss on the grounds that FCPC does not have standing to protest the Commission's PAA Order or to request amendment or clarification of the PAA Order. In considering St. Joe's Motion to Dismiss, the facts set forth in FCPC's Petition should be viewed in the light most favorable to FCPC in order to determine if FCPC's request is cognizable under the provisions of Rule 25-22.029, Florida Administrative Code, and Chapter 120, Florida Statutes. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). Staff believes that FCPC's Petition fails to state a cause of action upon which the Commission may grant relief, because FCPC fails to allege an adequate basis for its standing in this docket.

#### FCPC's Petition on Proposed Agency Action

Rule 25-22.029(4), Florida Administrative Code, provides that "[o]ne whose substantial interests may or will be affected by the Commission's proposed agency action may file a petition for a \$120.57 hearing . . . ." In its Petition, FCPC states that its substantial interests will be affected by the PAA Order because language in the PAA Order concerning FCPC's contractual relationship with St. Joe could be misconstrued in potential litigation with St. Joe. FCPC expressly states in its Petition that it does not object to the portion of the PAA Order approving St. Joe's request to restructure rates.

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In its Motion to Dismiss, St. Joe argues that FCPC has failed to assert a sufficient interest to establish standing to initiate a formal proceeding under Section 120.57, Florida Statutes. To establish standing to initiate a formal administrative proceeding, FCPC must demonstrate that its substantial interests are affected by the PAA Order. To demonstrate that its substantial interests are affected, FCPC must show (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a formal proceeding, and (2) that the injury is of a type or nature which the proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 1st DCA 1981).

St. Joe argues that FCPC cannot satisfy the first prong of the Agrico test because FCPC failed to allege that the PAA Order will subject it to any injury of sufficient immediacy to entitle it to a formal proceeding. St. Joe emphasizes that FCPC's Petition states that the portion of the PAA Order describing the relationship between St. Joe and FCPC potentially could be misconstrued or prejudicial. St. Joe also notes that FCPC does not allege it will suffer any economic injury other than potential economic injury.

In its Response, FCPC argues that its interests do not lack immediacy and are not speculative. FCPC points out that St. Joe has filed a lawsuit in circuit court against the prior owner of the paper mill in which it alleges that FCPC breached a contract that it assumed from the mill's prior owner. FCPC asserts that the prior owner has indicated that it will seek indemnification from FCPC if held liable for damages. FCPC states that St. Joe's circuit court allegations treat subjects which were alluded to by the Commission in its PAA Order.

St. Joe argues that FCPC cannot satisfy the second prong of the Agrico test because FCPC's claimed interest is not the kind designed to be protected by the Commission in a proceeding to restructure a utility's rates. St. Joe asserts that this type of proceeding is designed to protect the utility's interest in obtaining a fair rate of return and the ratepayers' interest in paying fair and reasonable rates. FCPC contends that it should always be the Commission's objective to ensure that its orders are properly interpreted.

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Staff believes that FCPC's claimed substantial interest does not satisfy either prong of the Agrico test. First, the potential that the PAA Order could possibly be misconstrued in the future by a circuit court is not an injury of sufficient immediacy to entitle FCPC to standing under Agrico. FCPC can only speculate as to the effect that the PAA Order may have on future litigation involving FCPC. See Village Park Mobile Home Association v. State, Department of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process).

Second, FCPC's claimed injury is not the type of injury that a proceeding on rate restructuring is designed to protect. As St. Joe asserted, this type of proceeding is designed to protect the utility's interest in obtaining a fair rate of return and the ratepayers' interest in paying fair and reasonable rates. Staff emphasizes that FCPC, in its Petition, does not allege that its substantial interests as a ratepayer are affected by the PAA Order. FCPC only alleges that its substantial interests as a potential litigant may be affected.

#### FCPC's Request for Amendment or Clarification

In its Response, FCPC acknowledges that a formal proceeding is unnecessary to obtain the relief it desires. FCPC states that its Petition is intended only to serve as the required vehicle for its Request for Amendment or Clarification. Staff believes, however, that because FCPC lacks standing to initiate a formal proceeding to challenge the PAA Order, FCPC also lacks standing to request amendment or clarification of the PAA Order. Staff believes that granting FCPC's Request for Amendment or Clarification would set an unwise precedent of allowing any entity, including a competitor, supplier, or customer, regardless of standing, to seek amendment or clarification of language in Commission orders. Accordingly, staff recommends that FCPC's Request for Amendment or Clarification be denied.

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**ISSUE 2:** Should the Commission, on its own motion, clarify its decision in Order No. PSC-97-0526-FOF-GU, issued May 7, 1997, in this docket?

**RECOMMENDATION:** Yes. The Commission, in its order on this recommendation, should state that language in Order No. PSC-97-0526-FOF-GU, concerning Florida Coast Paper Company's contractual relationship with St. Joe Natural Gas Company, is not intended to reflect any findings of the Commission regarding the contractual relationship between those entities.

**STAFF ANALYSIS:** Staff believes that, although FCPC lacks standing to request clarification of the PAA Order, it would be appropriate in these circumstances for the Commission to clarify the PAA Order on its own motion. Staff recommends that the following language, found at page 2 of the PAA Order, be clarified:

. . . In 1991, St. Joe and SJFPC entered into a service contract in which the customer agreed to purchase a minimum monthly quantity of gas from the company at interruptible rates . . .

. . . FCPC has contested its responsibility with regard to the original gas contract between St. Joe and SJFPC. As a result, FCPC has decreased its gas usage by approximately 50 percent of the contract amount. In addition, FCPC has notified St. Joe that it will no longer assume liability for \$120,000 in Florida Gas Transmission demand charges. In the event FCPC is determined not to have a contractual obligation, FCPC may find it more economical to burn an alternate fuel rather than pay St. Joe's high interruptible rates . . .

This language was included in staff's recommendation on the petition for rate restructuring only to inform the Commission of the circumstances surrounding St. Joe's petition. The contractual dispute between St. Joe and FCPC was not before the Commission.

Staff does not recommend that the above language be modified or deleted. Staff's recommendation is that the Commission simply state in its order on this recommendation that the PAA Order was not intended to reflect any findings regarding the contractual relationship between St. Joe and FCPC.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed, because no person whose substantial interests were affected by the Commission's proposed agency action timely filed a petition to protest the PAA.

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed, because no person whose substantial interests were affected by the Commission's proposed agency action timely filed a petition to protest the PAA.