

several of the allegations set forth in the Requests for Status Conference. First, contrary to the assertions in the Requests for Status Conference, there is no emergency nor other exigent circumstance requiring expedited treatment by the Commission. Second, also contrary to the assertions in the Requests for Status Conference, the Commission's procedures neither violate the Administrative Procedure Act nor the Uniform Rules of Procedure--the Commission established this generic docket consistent with its long-standing practice in similar Commission proceedings. Further, the procedures established in this docket do not deny FPL due process, as it has alleged, since there are adequate remedies available to it to address any perceived procedural deficiencies. Third, also contrary to the allegations contained in FPL's Request, at least with respect to DENA, the Commission's decision on intervention was proper, and by failing to timely object, FPL has now waived its right to claim that the intervention granted to DENA, or to any of the other intervenors in this docket, was "procedurally improper."

Background

3. The Commission opened this docket in December of 1998. Duke New Smyrna, as an electric utility with planned generating assets, is a party to this docket pursuant to the Order Establishing Procedure. See Order Establishing Procedure at 1. DENA filed its petition to intervene on February 18, 1999, and on March 11, 1999, the Commission granted DENA's petition. Neither FPL, FPC nor TECO objected to DENA's petition to intervene, nor

to any of the other petitions to intervene filed in this proceeding.

4. On March 18, 1999, the Commission held the first issue identification conference in this docket. On March 20, 1999, the Commission issued its Order Establishing Procedure for this docket and on May 21, 1999, the Commission issued its Revised Order Establishing Procedure. On May 26, 1999, the Commission held the second issue identification conference in the docket. FPL, FPC and TECO were represented and otherwise fully participated at both issue identification conferences. Representatives of Duke New Smyrna and DENA also attended both conferences, yet at no time did FPL, FPC, or TECO raise any objections to the participation therein by either Duke New Smyrna or DENA.

No Emergency Exists.

5. FPL has styled its request for status conference as an "emergency" request and TECO has requested an "expedited" status conference. However, neither FPL nor TECO has stated sufficient grounds to merit either expediting this matter or treating this matter as an emergency.

6. The Commission opened this generic docket about six months ago. Through its published notices and through the issue identification conferences, the Commission has kept all parties, including FPL and TECO, fully apprised of all procedural and substantive aspects of this case. Due process considerations, the Administrative Procedure Act, and Chapters 25-22 and 28-106,

F.A.C., require nothing more.

7. Moreover, any perceived "emergency" situation in this case is wholly the result of FPL's and TECO's inaction. Either FPL or TECO could have interposed their challenge to the procedure adopted by the Commission in this docket immediately after the Commission opened the docket in December of 1998, or upon reviewing the Order Establishing Procedure issued almost three months ago on March 20, 1999. FPL and TECO opted not to file such challenges. Thus, any "emergency" in this case is self-imposed by the conscious indifference of FPL and TECO, and the Commission need not provide expedited treatment of the Requests for Status Conference.

The Commission Has Jurisdiction to Continue This Docket and the Commission's Procedures Comply With Chapter 120, F.S., and the Uniform Rules of Procedure.

8. Section 366.04(5), Florida Statutes ("F.S."), provides:

The commission shall further have jurisdiction over the planning, development and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

This docket is clearly a reasonable and necessary exercise of the jurisdiction granted to the Commission by the above statute.

Section 366.055(1), F.S. provides, in pertinent part, as follows.

(1) Energy reserves of all utilities in the Florida energy grid shall be available at all times to ensure that grid reliability and integrity are maintained. The commission is authorized to take such action as is necessary to assure compliance.

This proceeding is clearly an authorized action of the Commission to ensure that adequate reserves are available to maintain grid reliability and integrity. Taken together, these two provisions provide the Commission a clear jurisdictional basis to investigate the aggregate electric utility reserve margins planned for peninsular Florida. The issue of whether Florida has a reliable source of energy for operational and emergency purposes is inextricably entwined with the issue of the adequacy of reserve margins in Florida.

9. Moreover, pursuant to Section 366.05(8), F.S., the Commission has additional relevant authority, as follows.

If the Commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance.

This docket may be also be viewed as a legitimate, generic, preliminary proceeding to determine whether there might be probable cause to believe that inadequacies exist, as a precursor to further proceedings in accordance with the Commission's jurisdiction pursuant to this section.

10. FPC argues in its request for status conference that because this docket was not initiated by the filing of a "formal petition," the Commission has failed to comply with Uniform Rule

28-106.201, F.A.C. This argument ignores the Commission's own rule, Rule 25-22.036, F.A.C., and long-standing Commission practice and is thus wholly without merit.

11. Rule 25-22.036(3), F.A.C. entitled "Initiation of Formal Proceedings" (emphasis supplied) provides:

Orders and Notices. Upon its own motion, the Commission may issue an order or notice initiating a proceeding. Such order or notice shall be served upon all persons named therein. The Commission may also transmit notice of its action to other persons requesting such notice, and may publish such notice in appropriate newspapers of general circulation and the Florida Administrative Weekly.

Clearly, this provision sets forth a procedure by which the Commission may properly initiate a formal proceeding without filing a "formal petition." That is precisely what the Commission did in this case and FPC's failure to cite Rule 25-22.036(3),¹ F.A.C., is misleading.

12. Moreover, the procedure adopted by the Commission in this generic docket is consistent with the procedures adopted by the Commission in other similar dockets. In other words, this procedure is no surprise to any party that regularly appears before the Commission.

13. In the Requests for Status Conference, FPL, FPC and

¹The Commission did not repeal Rule 25-22.036(3), F.A.C., in May of 1999 when it repealed all rules that it deemed to be redundant or superseded by the Uniform Rules of Procedure. Thus, Rule 25-22.036(3), F.A.C., remains a valid rule of the Commission. If FPC believes Rule 25-22.036(3), F.A.C., is unauthorized or is in conflict with the Uniform Rules of Procedure then its remedy is to challenge the rule. Duke is not aware of any such rule challenge being filed.

TECO claim that allowing issues to be identified after the time to file testimony expires is unfair and rises to the level of a due process violation. This is simply hyperbole. The remedy for any perceived unfairness is for FPL, FPC, and TECO to file a request for extension of time to file testimony², or, if truly new issues were raised after the initial rounds of testimony were filed, for the Commission to provide all parties an opportunity to address those new issues via supplemental testimony. See Section 120.57(1)(b), F.S., which provides that "[a]ll parties shall have an opportunity to . . . present evidence and argument on all issues involved . . ." in a hearing.

DENA's Intervention Was Proper.

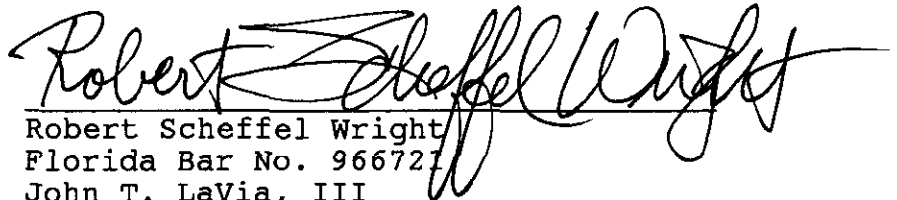
14. In its request for status conference, FPL alleges, without citation to authority or explanation, that the "decisions on intervention are procedurally improper." At least with regard to DENA, FPL is wrong.

15. On February 18, 1999, DENA filed a timely petition to intervene in this docket that fully complied with the applicable pleading requirements and on March 11, 1999, the Commission granted DENA's petition. FPL neither objected to nor moved to dismiss DENA's petition to intervene and it has waived its right to do so now. DENA is a proper intervenor in this docket and FPL's vague protestations are without merit.

²In fact, on June 10, 1999, TECO filed such a request.

CONCLUSION

In conclusion, Duke New Smyrna and DENA have no objection to a timely scheduled status conference and preliminary prehearing conference. The Commission should, however, reject the contentions of FPL, FPC, and TECO that this docket, and the procedures employed by the Commission in prosecuting this docket, are in any way improper, as well as any contention that DENA is not a proper intervenor. Such tactics have the appearance of being nothing more than a ploy designed to delay or avoid legitimate Commission inquiry and action with regard to serious power reliability problems in Peninsular Florida.



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