

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine
need for Hines Unit 3 in Polk
County by Florida Power
Corporation.

DOCKET NO. 020953-EI
ORDER NO. PSC-02-1536-PCO-EI
ISSUED: November 8, 2002

ORDER DENYING INTERVENTION WITHOUT PREJUDICE

The Florida Partnership for Affordable Competitive Energy (PACE) filed a Petition to Intervene in this need determination docket on October 31, 2002. Florida Power Corporation (FPC) responded in opposition to PACE's petition on November 7, 2002.

PACE states that it is a statewide trade association of independent power producers who are able to provide electric power to meet Florida's energy needs. Pace asserts that a decision on FPC's petition for need determination will affect the substantial interests of PACE's members by affecting their opportunity to provide cost-effective alternatives to public utility-owned generating capacity. PACE contends that since one purpose of this proceeding is to ascertain whether FPC has proposed the most cost-effective capacity solution, PACE's interests are of the type that this proceeding is designed to protect. PACE further asserts that it meets the test for associational standing as set forth in *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982), and as extended by *Farmworker's Rights Organization, Inc. v. Dept. of Health and Rehabilitative Svcs.*, 417 So. 2d 753 (Fla. 1st DCA 1982), because a substantial number of its members will be substantially affected by the results of this proceeding, the subject matter of the proceeding is within the association's general scope of interest, and the relief requested is of the type appropriate for a trade association to receive on behalf of its members.

FPC responds that PACE cannot meet the requirements of *Florida Home Builders* in that its individual members cannot meet the threshold requirements for standing set by *Agrico Chem. Co. v. Dept of Env'tl. Reg.*, 406 So. 2d 478 (Fla. 2nd DCA 1981). FPC argues that PACE cannot and does not intend to advance the interests of any particular disappointed bidder, nor does its assertion of harm to the general economic interests of its members constitute an

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immediate injury of the type the need determination proceeding is designed to protect. FPC also argues that ongoing Docket No. 020398-EQ, opened to investigate revision of Rule 25-22.082, Florida Administrative Code (the "bid rule") would be the more appropriate forum in which to advance these general arguments, and that this Commission's ruling allowing PACE intervention in the Florida Power and Light Martin and Manatee need determination dockets (Dockets Nos. 020262-EI and 020263-EI) is not controlling in this docket.

Intervention in this docket should be allowed to permit a substantially affected person to request appropriate relief. To the extent that an individual participant in FPC's Request for Proposals (RFP) process can allege the process was not conducted in accordance with Rule 25-22.082, Florida Administrative Code (the "bid rule"), or that FPC failed to take into account some facts or circumstances which resulted in prejudice to that participant, intervention would be proper. However, PACE does not state in its Petition that it intends to argue that the actual RFP process was not conducted in accordance with the bid rule, to the actual detriment of any member, or that FPC's RFP process failed to take into account some fact which disadvantaged any member. Instead, PACE states it intends to challenge the general appropriateness of the RFP scoring criteria, the fairness of the RFP process, and whether FPC has met a burden of proof in demonstrating the cost effectiveness of its proposed Hines 3 plant as applied generically to all members.

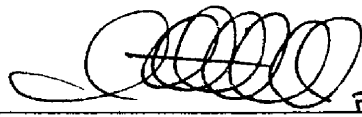
I do not find PACE's Petition adequately alleges an injury in fact that is of sufficient immediacy to entitle PACE to a Section 120.57, Florida Statutes, hearing, or alleges injury to the type of interests that this need determination proceeding is designed to protect, as required by *Agrico*. As PACE has not alleged that a substantial number of its members have suffered an immediate injury in fact which would entitle them to a hearing, PACE's Petition for Intervention is denied without prejudice.

Based upon the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as prehearing officer that the Petition for Intervention filed by the Florida Partnership for Affordable Competitive Energy is denied without prejudice.

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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 8th day of November, 2002.



FR BAEZ

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

LDH

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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.