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-02-1754-FOF-EI ISSUED: December 12, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

On October 31, 2002, the Florida Partnership for Affordable Competitive Energy (PACE) petitioned to intervene in Docket No. 020953-EI. The petition was denied, without prejudice, in Order No. PSC-02-1536-PCO-EI, issued November 8, 2002. PACE filed an Amended Petition to Intervene on November 15, 2002, and Florida Power Corporation (FPC) filed a Memorandum in Opposition on November 19, 2002. At the November 20, 2002, Prehearing Conference, the Prehearing Officer granted intervention; that ruling was incorporated into the Prehearing Order, Order No. PSC-02-1650-PHO-EI, issued November 25, 2002. The Prehearing Order required any Motions for Reconsideration be filed by November 26, 2002. On November 26, 2002, FPC filed a Motion for Reconsideration of that part of the Prehearing Order which granted PACE intervention.

We deny the Motion for Reconsideration. FPC has not demonstrated the Prehearing Officer misapprehended or overlooked any point of fact or law such that his Order is clearly mistaken.

FPC's initial assertion involves the standard of review that we should apply in a motion for reconsideration of a Prehearing

Officer's decision. FPC argues that the full Commission is a different decision making entity from the Prehearing officer, and therefore, the standard of review applied to motions for rehearing of the same entity (clear mistake of fact or law) should not be applied. Rather, FPC suggests that the correct standard in ruling on this Motion for Reconsideration is de novo, with no deference to the Prehearing Officer's Order.

FPC then makes a number of arguments that PACE's Intervention is not appropriate in this proceeding, and that the Prehearing Officer's decision constitutes a clear mistake of law. Fundamentally, FPC contends that PACE does not meet the requirements for standing as set forth in Florida Law under Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981) and Florida Home Builders Ass'n v. Department of Labor and Employment Sec., 412 So. 2d 351 (Fla. 1982). FPC argues that PACEs' member's competitive interests are not the types of interests this proceeding is designed to protect; that PACE has not alleged that FPC should have selected any one member's proposal as the winner; that PACE's arguments in support of its Amended Petition are not in fact issues in this case; and that PACE's assertion of the generic concerns of its members is inappropriate. Finally, FPC contends that Docket No. 020398-EQ, the "bid rule docket," is the more appropriate forum for PACE to raise these issues.

First, FPC argues that the correct standard of review in this type of motion for reconsideration is not whether the Prehearing Officer made a clear mistake of fact or law, but is instead some variant of de novo review by the entire Commission. This is incorrect; were this argument to be accepted, any party, for any reason, could seek reconsideration from the full Commission of any decision by a Prehearing Officer, rendering the Prehearing Officer superfluous at best.

Instead, the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering his Order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration it is not appropriate to reargue matters that have already been considered.

Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

We find that FPC's Motion for Reconsideration does not meet this standard. FPC has not demonstrated any point of fact or law which the Prehearing Officer overlooked or failed to consider in rendering his Order. FPC has not demonstrated that the Prehearing Officer overlooked any facts in reaching his decision to allow intervention, or that had additional facts been considered, the decision clearly would have been different.

As to a point of law, FPC would have us substitute our interpretation and application of the Agrico and Fla. Homebuilders cases for that of the Prehearing Officer. This is not the standard in granting rehearing; the question is whether the Prehearing Officer overlooked or misapprehended the law such that his decision is clearly mistaken. FPC, in its Memorandum of Opposition to PACE's intervention, filed November 19, 2002, made the same arguments about the interpretation of Agrico and Fla. Homebuilders; the Prehearing Officer had those arguments before him; and it cannot be said, as a matter of law, that the Prehearing Officer made a clear mistake in his application of those cases to the instant facts.

The record is clear that the Prehearing Officer had the facts and law before him, and made the determination that PACE has made factual allegations sufficient to confer standing to intervene in this docket as required by Agrico and Fla. Homebuilders. It is clear that Order PSC-02-1650-PHO-EI was a reasonable exercise of the Prehearing officer's discretion under these circumstances, and FPC's Motion for Reconsideration is denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power Corporation's Motion for Reconsideration of Order No. PSC-02-1650-PHO-EI is denied. It is further

ORDERED that this docket shall remain open to complete the need determination proceeding.

By ORDER of the Florida Public Service Commission this 12th day of December, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.