BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for electrical power plant in Taylor County by Florida Municipal Power Agency, JEA, Reedy Creek Improvement District, and City of Tallahassee.	DOCKET NO. 060635-EU ORDER NO. PSC-06-0898-PCO-EU ISSUED: October 26, 2006

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR INTERVENTION

On September 19, 2006, the Florida Municipal Power Agency (FMPA), JEA, Reedy Creek Improvement District, and City of Tallahassee (Tallahassee) (collectively, Applicants) filed a petition for a determination of need for a proposed electrical power plant in Taylor County pursuant to Section 403.519, Florida Statutes, and Rule 25-22.080, Florida Administrative Code (F.A.C.). By Order No. PSC-06-0819-PCO-EU, issued October 4, 2006, the matter has been scheduled for a formal administrative hearing on January 10, 2007. By petition dated October 20, 2006, the Sierra Club, Inc. (Sierra Club), John Hedrick, Brian Lupiani, and Barry Parsons requested permission to intervene in this docket.

The Sierra Club is a non-profit corporation with approximately 30,042 of its 700,000 national members residing in Florida. A number of those members receive electric service in Florida from JEA, Tallahassee, and from the various members of FMPA. Messrs. Hedrick and Lupiani reside in and take electric service from Tallahassee. These petitioners contend that, as electric consumers, the providers of their electric service will incur substantial costs associated with the proposed electric plant, which would be passed directly to the consumers through their bills once the plant is approved. Mr. Parsons states that he lives in Madison, in relatively close proximity to the proposed electric plant. Mr. Parsons contends that, because the proposed plant offers minimal measures to mitigate emissions, he will incur additional and substantial costs to address the health and property issues related to the adverse emissions from a large electric plant such as proposed in this proceeding.

Pursuant to Rule 25-22.039, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

To have standing under Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981), the intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing,

and (2) that this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural. International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, 1225-26 (Fla. 3rd DCA 1990). See also, Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote). The test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker's Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. Associational standing may be found where the substantial interests of a substantial number of an association's members may be affected by the Commission's decision in a docket, and those interests are both the type of interest the Commission's proceedings are designed to protect and the type of interest the association is entitled to represent on behalf of its members.

Messrs. Hedrick and Lupiani individually, and the Sierra Club on behalf of its affected Florida members, assert that as retail electric customers of the Applicants, their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant, because the Applicants' participation in the plant will impact the rates that will be charged to these petitioners. It appears that these petitioners' substantial interests may be affected by this proceeding; therefore, the petition shall be granted with respect to the Sierra Club and Messrs. Hedrick and Lupiani. Pursuant to Rule 25-22.039, F.A.C., the petitioners take the case as they find it.

The basis for Mr. Parsons' request for intervention is that that he "will incur additional and substantial costs to address the health and property issues related to the adverse emissions from a large electric plant such as proposed in this proceeding." Staff counsel has conferred with counsel for Mr. Parsons and has confirmed that he does not receive electric service from any of the Applicants. This is a proceeding pursuant to Section 403.519, Florida Statutes, which establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of environmental compliance are under the purview of the Florida Department of Environmental Protection. I find that Mr. Parsons has not adequately alleged that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, or that his alleged injury is of a type that this proceeding is designed to protect. Therefore, his petition for intervention is denied without prejudice.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the Petition to Intervene is granted with respect to the Sierra Club, Inc., Mr. Hedrick, and Mr. Lupiani. It is further

ORDERED that the Petition to Intervene with respect to Mr. Parsons is denied without prejudice. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding to:

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By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 26th day of October, 2006.

KATRINA J. TEW
Commissioner and Prehearing Officer

(SEAL)

JSB

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; or (2) 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. 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.