

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-06-0903-PCO-EU
ISSUED: October 27, 2006

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO EXTEND DISCOVERY SCHEDULE
AND FILING DATE FOR TESTIMONY AND EXHIBITS

On September 19, 2006, the Florida Municipal Power Agency, 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, controlling dates were established for this docket and the matter was scheduled for a formal administrative hearing on January 10, 2007. On October 20, 2006, the Sierra Club, Inc. (Sierra Club), John Hedrick, Barry Parsons, and Brian Lupiani petitioned to intervene in this matter. By Order No. PSC-06-0898-PCO-EU, issued October 26, 2006, intervention was granted to the Sierra Club, Mr. Hedrick, and Mr. Lupiani (collectively, Movants), but denied without prejudice to Mr. Parsons. Simultaneous to their request for intervention, the Movants filed a Motion to Extend Discovery Schedule and Filing Date for Testimony and Exhibits (Motion). On October 23, 2006, the Applicants filed a Response in Opposition to the Motion.

The Movants note that Order No. PSC-06-0819-PCO-EU currently requires intervenors to file testimony and exhibits by October 24, 2006. The Movants contend that the amount of time afforded for intervenor testimony is insufficient, especially in light of the amount of time the Applicants had to prepare their case in chief, prior to filing for a determination of need on September 19, 2006. The Movants contend that due process requires that the Commission permit an additional four to five weeks to conduct discovery and to prepare prefiled testimony and exhibits than is afforded under the current schedule.

The Applicants respond that the Movants provide no factual or legal support for their assertion that Order No. PSC-06-0819-PCO-EU violates their due process rights. The Applicants contend that the procedural schedule established in this docket is by no means unusual for proceedings of this type and is designed to ensure compliance with the Commission's Rule 25-22.080, F.A.C. The Applicants also contend that the Movants provide no basis to conclude that more time is needed to conduct discovery or prepare intervenor testimony than what has been provided in prior Commission orders.

The Applicants cite Rule 28-106.211, F.A.C., which provides that the Prehearing Officer has broad authority to issue any orders necessary to effectuate discovery, to prevent delay, and to

DOCUMENT NUMBER-DATE

09897 OCT 27 06

FPSC-COMMISSION CLERK

promote the just, speedy, and inexpensive determination of all aspects of the case. The Applicants contend that the Movants fail to provide support that the schedule established by Order No. PSC-06-0819-PCO-EU constitutes an abuse of discretion or somehow fails to provide due process. The Response characterizes the Motion as an untimely request for reconsideration of Order No. PSC-06-0819-PCO-EU, and for the reasons stated in the Response, the Motion should be denied.

Ruling

Having reviewed the pleadings, I find that the time frames established in Order No. PSC-06-0819-PCO-EU are both reasonably consistent with those exercised in prior need determination proceedings,¹ and are designed to comport with the requirements of Rule 25-22.080, F.A.C. Rule 25-22.080, F.A.C. (“Electrical Power Plant Permitting Proceedings”), provides that the Commission shall set a date for a hearing which shall be within 90 days of receipt of the petition for a need determination, and the matter will be placed before the Commission on an agenda which will permit a decision no later than 135 days from the date of receiving the petition. The Applicants waived the 90-day limit from December 18, 2006, to January 10, 2007, so that a hearing date could be scheduled on the Commission calendar permitting participation at hearing by the full Commission. The Applicants also waived the 135-day limit from February 1, 2007, to February 13, 2007, to permit additional time for post-hearing briefs by the parties and post-hearing recommendation by staff. The Motion fails to provide support for moving the intervenor testimony and exhibit filing date (and, by extension, the controlling dates for discovery and other events in this matter), approximately a month beyond the time frame established in Rule 25-22.080, F.A.C. Therefore, the Motion as requested is denied.

The Movants did not petition for intervention in this matter until October 20, 2006, which was only four days prior to the intervenor testimony and exhibit deadline originally established by Order No. PSC-06-0819-PCO-EU. As stated in Order No. PSC-06-0898-PCO-EU, the Sierra Club, Mr. Hedrick, and Mr. Lupiani were granted intervention with the understanding that they

¹ For example, see Order No. PSC-06-0521-PCO-EI, issued June 16, 2006, in Docket No. 060424-EI, In re Petition for determination of need for Bobwhite-Manatee 230 kV transmission line in Manatee and Sarasota Counties, by Florida Power & Light Company; and Order No. 06-0190-PCO-EM, issued March 9, 2006, in Docket No. 060155-EM, In re: Petition for determination of need for proposed Stanton Energy Center Combined Cycle Unit B electrical power plant in Orange County, by Orlando Utilities Commission. In their Response, the Applicants cite to these additional examples: Order No. PSC-06-0247-PCO-EC, issued March 23, 2006, in Docket No. 060220-EC, In re: Petition for determination of need for Seminole Generating Station Unit 3 electrical power plant in Putnam County, by Seminole Electric Cooperative, Inc.; Order No. PSC-06-0245-PCO-EI, issued March 23, 2006, in Docket No. 060225-EI, In re: Petition for determination of need for West County Units 1 and 2 electrical power plants in Palm Beach County, by Florida Power & Light Company; Order No. PSC-05-0485-PCO-EM, issued May 4, 2005, in Docket No. 050256-EM, In re: Petition to determine need for Treasure Coast Energy Center Unit 1, proposed electrical power plant in St. Lucie County, by Florida Municipal Power Agency; Order No. PSC-04-0808-PCO-EI, issued August 19, 2004, in Docket No. 040817-EI, In re: Petition for determination of need for Hines 4 power plant in Polk County by Progress Energy Florida, Inc.; Order No. PSC-04-0325-PCO-EI, issued March 30, 2004, in Docket No. 040206-EI, In re: Petition to determine need for Turkey Point Unit 5 electrical power plant, by Florida Power & Light Company.

take the case as they find it;² this includes the procedural requirements and timeframes that have been established in this docket.

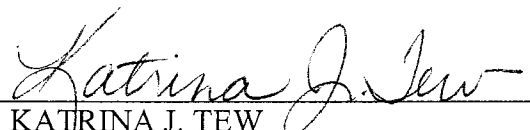
Order No. PSC-06-0899-PCO-EU, issued on October 26, 2006, addressed a separate request by Intervenor Rebecca Armstrong for an extension of time for filing intervenor testimony and exhibits. That Order granted an extension for filing all intervenor testimony and exhibits to November 2, 2006. Consistent with the ruling in that Order, the Movants shall be afforded the same extension. All other controlling dates established by Order No. PSC-06-0819-PCO-EU shall remain as currently scheduled.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the October 20, 2006, Motion to Extend Discovery Schedule and Filing Date for Testimony and Exhibits, is denied in part and granted in part as set forth in the body of this Order. It is further

ORDERED that, consistent with Order No. PSC-06-0899-PCO-EU, all intervenor testimony and exhibits shall be filed by November 2, 2006. Order No. PSC-06-0819-PCO-EU is affirmed in all other respects.

By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 27th day of October, 2006.


KATRINA J. TEW
Commissioner and Prehearing Officer

(S E A L)

JSB

² See Rule 25-22.039, F.A.C.

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.