

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-06-0971-PCO-EU
ISSUED: November 21, 2006

ORDER GRANTING INTERVENTION

On September 19, 2006, the Florida Municipal Power Agency (FMPPA), 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.

NRDC's Petition for Intervention

By petition dated November 2, 2006, the Natural Resources Defense Council (NRDC) requested permission to intervene in this docket. The NRDC is a national non-profit organization that is committed to protecting the health and environment and is involved in issues relating to energy policy, including evaluating the appropriateness of new energy capacity and evaluating efficiency, conservation, and other demand-side options. Approximately 29,422 of NRDC's 526,778 national members reside in Florida. A number of these Florida members receive electric service from JEA, Tallahassee, and the various members of FMPPA.

In its petition, the NRDC contends that it is entitled to intervene in this matter based on the following assertions: (1) there are more than 2,200 NRDC members that are Florida residents that live in the service areas of the Applicants, and 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; (2) the NRDC members will be directly affected by the cost impacts of future carbon regulation; (3) the NRDC members will be directly affected by the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand-side alternatives; and (4) construction of the plant will subject NRDC members and other Floridians to the harmful effects of increased pollution.

Standards of Intervention

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

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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, the intervenor must meet the two prong standing test in 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).

Further, 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 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: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Analysis & Ruling

It appears that the NRDC meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. The NRDC asserts that its substantial interests are of sufficient immediacy to entitle it to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, the NRDC, on behalf of its affected Florida members, asserts 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 the Applicants will charge these petitioners (see NRDC's first assertion). With respect to the second prong of the associational standing test, the subject matter of the proceeding is clearly within the NRDC's general scope of interest and activity. NRDC contends that its members will be directly affected by the inappropriate reliance on new capacity instead of considering other alternatives. The Commission does consider, in need determination proceedings, whether the proposed plant is the most cost-effective alternative available (see NRDC's third assertion). As for the third prong of the associational standing test, the NRDC is seeking intervention in this docket in order to represent the interests of its members.

Based on the foregoing analysis, NRDC's standing in this docket has been established. With regard to the NRDC's second and fourth assertions of standing, however, the NRDC's petition fails to state grounds upon which intervention can be granted. Specifically, in its second assertion of standing, the NRDC contends that NRDC members will be directly affected by the cost impacts of future carbon regulation, which would increase the rates and charges that its members will be forced to pay the Applicants. Such assessments are speculative and conjectural, rather than real and immediate in nature. Additionally, in its fourth assertion of standing, the NRDC contends that construction of the plant further will subject NRDC members and other Floridians to the harmful effects of increased pollution. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of environmental compliance, however, are under the purview of the Florida Department of Environmental Protection. Therefore, the NRDC's allegation of substantial injury with respect to this assertion is not of a type or nature which this proceeding is designed to protect.

Conclusion

In conclusion, the NRDC meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders; therefore, the NRDC's petition for intervention shall be granted. However, this decision should not be construed to permit the NRDC to raise arguments supporting its second and fourth assertions of standing. Pursuant to Rule 25-22.039, F.A.C., the petitioners take the case as they find it.

Based on the foregoing, it is

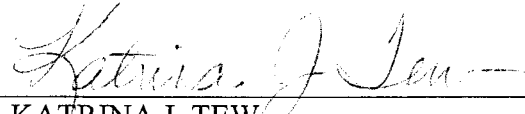
ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the Petition to Intervene filed by the Natural Resources Defense Council is granted as set forth herein. It is further

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 21st day of
November, 2006.


KATRINA J. TEW
Commissioner and Prehearing Officer

(S E A L)

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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.