

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-06-0974-PCO-EU
ISSUED: November 22, 2006

ORDER DENYING MOTION FOR EXTENSION OF TIME

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, the matter has been scheduled for a formal administrative hearing on January 10, 2007. On November 2, 2006, the Natural Resources Defense Council, Inc. (NRDC), petitioned to intervene in this matter. Intervention was granted on November 21, 2006, by Order No. PSC-06-0971-PCO-EU. Simultaneous to its request for intervention, the NRDC filed a Motion for Extension of Time to File Testimony (Motion). On November 9, 2006, the Participants filed a Response in Opposition to the Motion.

The NRDC notes that Order No. PSC-06-0819-PCO-EU, which required intervenors to file testimony and exhibits by October 24, 2006, was subsequently amended to require intervenors to file testimony and exhibits by November 2, 2006. The NRDC contends 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 NRDC further contends that the substantive participation of the public in the need determination proceeding is an important component of the regulatory process, and that it requires additional time to identify appropriate experts and prepare substantive testimony. The Motion further contends that on its face, the timetable established in the Procedural Order and subsequent amended schedule are objectively unreasonable and may constitute a violation of federal and state constitutional rights to due process. Finally, the NRDC contends that due process requires that the Commission permit an additional 60 days, or longer period as the Commission deems appropriate, to conduct discovery and to prepare prefiled testimony and exhibits than is afforded under the current schedule.

The Applicants respond that the NRDC provides no factual or legal support for its assertion that Order No. PSC-06-0819-PCO-EU violates NRDC's 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 NRDC provides 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. Finally, the Applicants argue that the

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NRDC has engaged witnesses and has already submitted more than 400 pages of testimony and supporting exhibits.

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 promote the just, speedy, and inexpensive determination of all aspects of the case. The Applicants contend that the NRDC fails to provide support that the schedule established by Order Nos. PSC-06-0819-PCO-EU and PSC-06-0899-PCO-EU, constitute an abuse of discretion or somehow fail 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 Nos. PSC-06-0819-PCO-EU and PSC-06-0899-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), beyond the time frame established in Rule 25-22.080, F.A.C. Therefore, the Motion as requested is denied.


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.

The NRDC did not petition for intervention in this matter until November 2, 2006, which was nine days after the intervenor testimony and exhibit deadline originally established by Order No. PSC-06-0819-PCO-EU. As stated in Order No. PSC-06-0971-PCO-EU, the NRDC was granted intervention with the understanding that they take the case as they find it;² this includes the procedural requirements and timeframes that have been established in this docket.

Based on the foregoing, it is

ORDERED by Commissioner Katrina J. Tew, as Prehearing Officer, that the November 2, 2006, Motion for Extension of Time to File Testimony and Exhibits, is denied as set forth in the body of this Order. It is further

By ORDER of Commissioner Katrina J. Tew, as Prehearing Officer, this 22nd day of November, 2006.


KATRINA J. TEW
Commissioner and Prehearing Officer

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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.

² See Rule 25-22.039, F.A.C.

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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.