

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for  
Glades Power Park Units 1 and 2 electrical  
power plants in Glades County, by Florida  
Power & Light Company.

DOCKET NO. 070098-EI  
ORDER NO. PSC-07-0323-PCO-EI  
ISSUED: April 16, 2007

ORDER GRANTING INTERVENTION

On February 1, 2007, Florida Power & Light Company (FPL) filed a petition for determination of need for Glades Power Park Units 1 and 2 electrical power plants in Glades County pursuant to Sections 366.04 and 403.519, Florida Statutes, and Rules 25-22.080, 25-22.081, and 28-106.201, Florida Administrative Code (F.A.C.). By Order No. PSC-07-0120-PCO-EI, issued February 9, 2007, the matter has been scheduled for a formal administrative hearing on April 16-17, 2007.

NRDC's Petition for Intervention

On April 5, 2007, the Natural Resources Defense Council (NRDC) petitioned to intervene in this docket. NRDC is a national non-profit organization that is committed to the protection of the environment, human health, and natural resources, and is involved in issues relating to energy policy, including evaluating the appropriateness of new energy capacity. Approximately 30,000 of NRDC's more than 500,000 national members reside in Florida. A substantial number of these Florida members receive electric service from FPL.

In its petition, NRDC contends that it is entitled to intervene in this matter based on the following assertions: (1) there are more than 14,000 NRDC members that are Florida residents that live in FPL's service areas, and their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plants because FPL's participation in the plant will impact the rates that will be charged to these petitioners; (2) NRDC members will be directly affected by the cost impacts of future carbon regulation; (3) 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 health and environmental consequences due to decisions that rely on sources of energy such as coal.

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 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

DOCUMENT NUMBER-DATE

03209 APR 16 5

FPSC-COMMISSION CLERK

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 NRDC meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. 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, NRDC, on behalf of its affected Florida members, asserts that as retail electric customers of FPL, their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant, because if approved, FPL's construction of the plants will impact the rates FPL 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 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 NRDC's second and fourth assertions of standing, however, NRDC's petition

fails to state grounds upon which intervention can be granted. Specifically, in its second assertion of standing, NRDC contends that its 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 FPL. Such assessments are speculative and conjectural, rather than real and immediate in nature. Additionally, in its fourth assertion of standing, NRDC contends that construction of the plant further will subject NRDC members to health and environmental consequences of decisions which rely on coal as energy. 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 petitioner takes the case as it finds it.


Based on the foregoing, it is

ORDERED by Commissioner Matthew M. Carter II, as Prehearing Officer, that the Petition to Intervene is granted with respect to the Natural Resources Defense Council 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:

Michael Gross  
Earthjustice  
P.O. Box 1329  
Tallahassee, FL 32302  
Telephone: 850-681-0031  
Telecopier: 850-681-0020  
[mgross@earthjustice.org](mailto:mgross@earthjustice.org)

By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 16th  
day of April, 2007.



MATTHEW M. CARTER II  
Commissioner and Prehearing Officer

( S E A L )

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.