

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of negotiated purchase power contract with FB Energy, LLC by Progress Energy Florida.

DOCKET NO. 090372-EQ
ORDER NO. PSC-10-0533-PCO-EQ
ISSUED: August 19, 2010

ORDER GRANTING MOTION TO EXPEDITE DISCOVERY

Background

On July 16, 2009, Progress Energy Florida, Inc. (PEF or Company) filed a petition requesting approval of a contract for the purchase of firm capacity and energy between PEF and Florida Biomass Energy, LLC (FB Energy). By Order No. PSC-09-0852-PAA-EQ, issued December 30, 2009, the Commission approved the contract between PEF and FB Energy. On January 20, 2010, US Funding Group, LLC (Funding Group) timely filed a Petition Protesting Notice of Proposed Agency Action Order Approving Negotiated Purchase Power Contract.

On February 10, 2010, FB Energy filed a Motion to Dismiss Funding Group's Petition (Motion to Dismiss). Funding Group filed its Response and Amended Response to FB Energy's Motion to Dismiss on February 17 and February 18, 2010, respectively. By Order No. PSC-10-0256-FOF-EQ, issued April 26, 2010, the Commission granted FB Energy's Motion to Dismiss, stating that Funding Group's Petition failed to demonstrate it had standing to pursue a protest and request a hearing under the two-prong test required by Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

On May 11, 2010, Funding Group filed a Motion for Reconsideration of Order No. PSC-10-0256-FOF-EQ, stating that it should have been given leave to amend its protest of Order No. PSC-09-0852-PAA-EQ. On May 18, 2010, FB Energy filed a Response to the Motion for Reconsideration, stating its belief that Order No. PSC-10-0256-FOF-EQ was correct on all points, but that in an abundance of caution, Funding Group should be given leave to amend its protest. By Order No. PSC-10-0434-FOF-EQ, issued July 6, 2010, the Commission granted reconsideration¹, and ordered that, if filed, the amended protest shall be filed 15 days from the date of the order, comport with the requirements of Rule 28-106.201, F.A.C., and conclusively show why Funding Group has standing under Agrico.

On July 21, 2010, Funding Group timely filed its amended protest. On August 9, 2010, FB Energy filed notice of service of its first request for production of documents, first set of interrogatories, and first request for admissions to Funding Group. On the same date, FB Energy also filed an Unopposed Motion to Expedite Discovery (Motion).

¹ Commissioner Skop dissented on the basis that granting the Motion for Reconsideration was improper because Funding Group failed to meet the legal standard required for the Commission to grant reconsideration ("an arbitrary feeling characterized as 'an abundance of caution' clearly does not meet the legal standard required for the Commission to grant reconsideration, nor does it allow the Commission to ignore the essential requirements of law."), and that the Funding Group legal argument was fundamentally flawed.

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FPSC-COMMISSION CLERK

Motion to Expedite Discovery

In its Motion, FB Energy states its belief that Funding Group lacks standing to request a hearing in this proceeding because it is not a retail customer of PEF, and that the allegations made by Funding Group do not afford a basis for its standing. FB Energy's discovery requests go to the issue of whether Funding Group is a customer of PEF, and whether it was a customer of PEF at the time Funding Group filed its initial protest of Order No. PSC-09-0852-PAA-EQ. FB Energy believes the responses to its discovery will be simple and brief, and asks that the Prehearing Officer permit and expedited time in which Funding Group should respond, in order to avoid unnecessary delay in this proceeding, by August 23, 2010. FB Energy believes this expedited response will not prejudice or unduly burden Funding Group, and counsel for Funding Group has stated that it does not object to the granting of this Motion.

Decision


Having considered the matters set forth in the Motion, it appears that the unopposed request is reasonable and shall therefore be granted.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Presiding Officer, that Florida Biomass Energy, LLC's Unopposed Motion to Expedite Discovery is granted as set forth herein. It is further

ORDERED that US Funding Group, LLC shall respond to the first request for production of documents, first set of interrogatories, and first request for admissions propounded upon it by Florida Biomass Energy, LLC, by August 23, 2010.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 19th day of August, 2010.



NATHAN A. SKOP
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.

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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.