

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for)
Seminole combined cycle facility, by) DOCKET NO. 20170266-EC
Seminole Electric Cooperative, Inc.)
)
In re: Joint petition for determination)
of need for Shady Hills combined cycle) DOCKET No. 20170267-EC
facility in Pasco County, by Seminole)
Electric Cooperative, Inc. and Shady) FILED: January 17, 2018
Hills Energy Center, LLC.)
_____)

MOTION TO INTERVENE OF MICHAEL TULK AND PATRICK DALY

Michael Tulk and Patrick Daly (collectively referred to as "Intervenors"), pursuant to Chapters 120 and 366, Florida Statutes,¹ and Rules 28-106.204 and 28-106.205, Florida Administrative Code ("F.A.C."), hereby respectfully move for leave to intervene in the above-styled dockets.

In summary, Intervenors are members, also referred to as "member-consumers," of Withlacoochee River Electric Cooperative, Inc. ("WREC"). As members of WREC, Intervenors are consumers of retail electricity provided by WREC. WREC is a not-for-profit, rural electric cooperative and is a member of Seminole Electric Cooperative, Inc. ("Seminole"). WREC is also a "primarily affected utility" within the meaning of Rule 25-22.081, F.A.C. The Intervenors' substantial interests in having their retail electric service supplied by the most cost-effective alternatives available, in being protected from having to pay rates resulting

¹All references herein to the Florida Statutes are to the 2017 edition thereof.

from the uneconomic duplication of generating facilities, and in having the Commission ensure that the best, most cost-effective power supply resources are selected and approved for operation by Seminole will be determined by the Commission's actions determining Seminole's need for new electrical generating capacity in these consolidated dockets, and accordingly, the Intervenor's are entitled to intervene to protect those interests. Intervenor's believe that Seminole can obtain required capacity and energy more cost-effectively than by using the resources proposed in Seminole's "Petition for Determination of Need for Seminole Combined Cycle Facility" (the "Seminole Facility Petition") and in the "Joint Petition for Determination of Need for Shady Hills Combined Cycle Facility" (the "Shady Hills Petition"), which were filed in the above-styled dockets on December 21, 2017.² Accordingly, Intervenor's believe that Seminole's Petitions should be denied as proposed.

PROCEDURAL BACKGROUND

1. The names, addresses, and telephone numbers of the Intervenor's are as follows:

Michael Tulk
18246 Hancock Bluff Road
Dade City, Florida 33523
Telephone 727-251-2709

and

² The Seminole Facility Petition and the Shady Hills Petition are referred to collectively herein as the "Seminole Petitions." By order dated January 5, 2018, the Commission consolidated Docket No. 20170267-EC with Docket No. 20170266-EC.

Patrick Daly
4640 Barchetta Drive
Land O'Lakes, Florida 34639
Telephone 727-492-0331.

2. All pleadings, orders and correspondence should be directed to Intervenor's representatives as follows:

Robert Scheffel Wright
John T. LaVia, III
Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, Florida 32308
Telephone (850) 385-0070
Facsimile (850) 385-5416.

3. The agency affected by this motion to intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. Commission Docket No. 20170266-EC was initiated by the Seminole Facility Petition on December 21, 2017, and Commission Docket No. 20180267-EC was initiated by the Shady Hills Petition filed on the same date. The final hearing in this case is scheduled for March 21-22, 2018, and therefore, pursuant to Rule 28-106.205(1), F.A.C., this motion to intervene is timely filed.

FACTUAL BACKGROUND

5. Each Intervenor has been a member of WREC for multiple years. As such, Intervenor's are retail consumers, commonly referred to as member-consumers, of electric service provided by WREC. WREC is a member of Seminole and as noted in Seminole's Petition, WREC is a "primarily affected utility" within the

meaning of Rule 25-22.081, F.A.C.

6. In the Shady Hills Petition, Seminole states that it proposes to enter into a tolling agreement (the "Tolling Agreement") supporting the construction of the Shady Hills Combined Cycle Facility (the "Shady Hills Facility"). Intervenors believe that Seminole can acquire any needed capacity and energy at costs significantly less than those proposed by Seminole under the Tolling Agreement supporting construction of the Shady Hills Facility.

STATEMENT OF AFFECTED INTERESTS

7. In these consolidated dockets, the Commission will determine whether the proposed Seminole Facility and the proposed Shady Hill Facility are needed, pursuant to Section 403.519, Florida Statutes. As part of those determinations, the Commission will determine whether these two proposed power plants are the most cost-effective alternatives available. Obviously, as consumers of retail electric service provided by WREC, a member of Seminole, Intervenors have a direct interest in ensuring that WREC's and Seminole's costs and rates are as low as possible, and accordingly, their interests in being served by the most cost-effective resources available, and similarly, their interests in being protected from paying for uneconomically duplicative generating capacity, will be determined by each of the Commission's decisions regarding the issues raised in

Seminole's Petitions.

8. Intervenors' substantial interests are of sufficient immediacy to entitle them to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that his, her, or its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the outcome of this proceeding will immediately impact and determine Intervenors' substantial interests in ensuring that their rates are as low as possible. The Intervenors' interests in receiving the most cost-effective service possible are specifically the type of interests that need determination proceedings are designed to protect, and the potential adverse effects on their interests are specifically the type of injury against which this proceeding is designed to protect, namely, to ensure that Seminole's selection of new capacity meets all of the requirements of Section 403.519, Florida Statutes.

DISPUTED ISSUES OF MATERIAL FACT

9. Among other issues, Intervenors believe that the following are disputed issues of material fact to be decided in this proceeding. These issues closely track the issues identified in the Order Establishing Procedure:

Issue 1A: Is there a need for the proposed Seminole Combined Cycle Facility, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 1B: Is there a need for the proposed Shady Hills Combined Cycle Facility, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 2A: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Seminole Electric Cooperative, Inc., which might mitigate the need for the proposed Seminole Combined Cycle Facility?

Issue 2B: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to Seminole Electric Cooperative, Inc. and Shady Hills Energy Center, LLC, which might mitigate the need for the proposed Shady Hills Combined Cycle Facility?

Issue 3A: Is there a need for the proposed Seminole Combined Cycle Facility, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 3B: Is there a need for the proposed Shady Hills Combined Cycle Facility, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 4A: Is there a need for the proposed Seminole Combined Cycle Facility, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 4B: Is there a need for the proposed Shady Hills Combined Cycle Facility, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 5A: Will the proposed Seminole Combined Cycle Facility provide the most cost-effective alternative available, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 5B: Will the proposed Shady Hills Combined Cycle Facility provide the most cost-effective alternative available, as this criterion is used in Section 403.519(3), Florida Statutes?

Issue 6A: Will the construction and operation of the Seminole Combined Cycle Facility result in the uneconomic duplication of generation resources, as that term is used in Section 366.04(5), Florida Statutes?

Issue 6B: Will the construction and operation of the Shady Hills Combined Cycle Facility result in the uneconomic duplication of generation resources, as that term is used in Section 366.04(5), Florida Statutes?

Issue 7: Did Seminole Electric Cooperative accurately and appropriately evaluate all reasonable alternative scenarios for cost-effectively meeting the needs of its customers over the relevant planning horizon?

Issue 8: Did Seminole Electric Cooperative administer a transparent, robust, and constructive RFP evaluation process that was designed to evaluate a range of scenarios and sensitivities to procure the most cost-effective alternative generation supply addition for cost-effectively meeting the needs of its Members and their Member-Consumers?

Issue 9A: Seminole and Shady Hills have claimed that Seminole considered various risk factors in their analyses of alternative power supply resources through which Seminole selected the Seminole Facility and the Shady

Hills Facility. Does the Seminole Facility have a more or less favorable risk profile than other options, including the Pasco Facility, based on evaluation of the risk factors identified by Seminole?

Issue 9B: Seminole and Shady Hills have claimed that Seminole considered various risk factors in their analyses of alternative power supply resources through which Seminole selected the Seminole Facility and the Shady Hills Facility. Does the Shady Hills Facility have a more or less favorable risk profile than other options, including the Pasco Facility, based on evaluation of the risk factors identified by Seminole?

Issue 10A: Based on the resolution of the foregoing issues and other matters within its jurisdiction which it deems relevant, should the Commission grant Seminole Electric Cooperative, Inc.'s petition to determine the need for the proposed Seminole Combined Cycle Facility?

Issue 10B: Based on the resolution of the foregoing issues and other matters within its jurisdiction which it deems relevant, should the Commission grant Seminole Electric Cooperative, Inc. and Shady Hills Energy Center, LLC's joint petition to determine the need for the proposed Shady Hills Combined Cycle Facility?

Issue 11A: Should Docket No. 20170266-EC be closed?

Issue 11B: Should Docket No. 20170267-EC be closed?

Intervenors reserve all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

STATEMENT OF ULTIMATE FACTS ALLEGED

10. As described above, Intervenors are members (member-consumers) of WREC, and as such, they must pay WREC's retail rates which are directly tied to the rates at which WREC purchases wholesale power from Seminole. Intervenors believe

that Seminole can acquire capacity and energy at costs that are significantly less than those proposed in Seminole's Petitions. Intervenors further believe that Seminole has not demonstrated that it has adequately evaluated the availability of potentially cost-effective alternatives to constructing part or all of the capacity identified in Seminole's Petitions, and accordingly, the Commission should at least deny Shady Hills Petition as filed; the Commission should further ensure, through the formal evidentiary proceedings in these consolidated dockets, that the proposed Seminole Combined Cycle Facility is needed and is the most cost-effective alternative available to meet the needs of Seminole, Seminole's members, including WREC, and the member-consumers of WREC and Seminole's other members.

STATUTES AND RULES THAT ENTITLE INTERVENORS TO RELIEF

11. The applicable statutes and rules that entitle Intervenors to relief include, but are not limited to, Sections 120.569, 120.57(1), and 403.519, Florida Statutes, and Chapter 28-106, Florida Administrative Code. The cited rules provide that persons whose substantial interests will be affected by agency action are entitled to intervene, and the cited sections of Chapter 120 provide that persons whose substantial interests will be affected are entitled to a hearing before the agency. Section 403.519, Florida Statutes, provides that in determining whether an electric power plant is needed in Florida, the

Commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available. Intervenors believe that Seminole can obtain required capacity and energy at significantly lower costs than requested in Seminole's Petition, and as members of WREC, a member of Seminole, Intervenors are entitled to intervene to protect their substantial interests in having Seminole provide wholesale power purchased by WREC for resale to the Intervenors as cost-effectively as possible.

12. Statement Explaining How the Facts Alleged by Intervenors Entitle Intervenors to the Relief Requested. Rule 28-106.205, F.A.C., provides that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. As WREC members, Intervenors must pay WREC's rates and the Commission's decisions in this docket will directly determine those rates. Therefore, the interests that Intervenors seek to protect via their intervention and participation in this case are immediate and of the type to be protected by these proceedings, and accordingly, Intervenors are entitled to

intervene to protect their substantial interests.

STATEMENT PURSUANT TO RULE 28-106.204(3), F.A.C.

13. Pursuant to Rule 28-106.204(3), F.A.C., the undersigned have conferred (by electronic mail) with counsel for Seminole and Shady Hills and hereby report that Seminole and Shady Hills reserve their rights to oppose the Intervenors' motion to intervene, pending review of the motion when it is filed.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Intervenors respectfully request the Commission to enter its order GRANTING this motion to intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents to Intervenors' representatives indicated in paragraph 2 above.

Respectfully submitted this 17th day of January 2018.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on this 17th day of January 2018.

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