FILED 1/24/2018
DOCUMENT NO. 00627-2018
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Seminole combined cycle facility, by Seminole Electric Cooperative, Inc.	DOCKET NO. 20170266-EC
In re: Joint petition for determination of need for Shady Hills combined cycle facility in Pasco County, by Seminole Electric Cooperative, Inc. and Shady Hills Energy Center, LLC.	DOCKET NO. 20170267-EC ORDER NO. PSC-2018-0062-PCO-EC ISSUED: January 24, 2018

ORDER GRANTING INTERVENTION TO MICHAEL TULK AND PATRICK DALY

On December 21, 2017, the above referenced dockets were opened for this Commission's review of the Petition for Determination of Need for Seminole Combined Cycle Facility (Seminole Facility), filed by Seminole Electric Cooperative, Inc. (Seminole) and the Joint Petition for Determination of Need for Shady Hills Combined Cycle Facility (Shady Hills Facility) in Pasco County, filed by Seminole and Shady Hills Energy Center, LLC (Shady Hills). Docket Nos. 20170266-EC and 20170267-EC were consolidated for hearing purposes by Order No. PSC-2018-0018-PCO-EC (Order Establishing Procedure), filed on January 5, 2018. The consolidated dockets have been set for hearing on March 21 and 22, 2018.

Motion for Intervention

By motion dated January 17, 2017, Michael Tulk and Patrick Daly (Intervenors) have requested permission to intervene (Motion). The Intervenors state that they are "member-consumers" of the Withlacoochee River Electric Cooperative, Inc. (WREC), and as such are consumers of retail electricity provided by WREC. WREC is a not-for-profit rural electric cooperative and WREC is a member of Seminole from whom it purchases wholesale power. The Intervenors assert that because WREC is a member of Seminole, WREC is a "primarily affected" utility as defined under Rule 25-22.081, Florida Administrative Code (F.A.C.).

The Intervenors state that their interests are of the type that these proceedings are designed to protect because as member-consumers of WREC, a determination of need by this Commission may have an adverse effect on ensuring they are receiving the most cost-effective service possible. The Intervenors assert that our evaluation of the need for the Seminole Facility and Shady Hills Facility is consistent with their substantial interests, which are (1) having their retail electric service supplied by the most cost-effective alternatives available; (2) being protected from paying rates resulting from the uneconomic duplication of generating facilities; and (3) ensuring that the best, most cost-effective power supply resources are selected and approved for operation by Seminole. The Intervenors believe that Seminole can obtain the required capacity and energy through more cost-effective resources than those proposed for the Seminole Facility and Shady Hills Facility. Intervenors further aver that Seminole can acquire

the needed capacity and energy at a significantly lower cost than those proposed under the tolling agreement for the Shady Hills Facility.

On January 19, 2018, Seminole filed a response to the Motion. Seminole stated they take no position on the Motion, subject to proof of standing at the hearing. By taking no position on the Motion, Seminole does not agree with or concede to any of the allegations asserted therein. Furthermore, Seminole disputes the appropriateness of the issues proposed by the Intervenors that are in addition to the issues listed in Attachment A of the Order Establishing Procedure.

Standards for Intervention

Pursuant to Rule 28-106.205, F.A.C.,

> Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good casue shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes (F.S.), hearing, and (2) this substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses 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).

Analysis & Ruling

Based upon a review of the materials provided, the Intervenors meet the two-prong standing test in Agrico. These proceedings are designed to determine the need for the Seminole Facility and the Shady Hills Facility proposed by Seminole. The Intervenors meet the first prong of Agrico because the intervenors must pay WREC's retail rates, which are directly tied to the rates at which WREC purchases wholesale power from Seminole. As WREC member-consumers, the Intervenors' would bear the cost burden for the Seminole Facility and Shady Hills Facility through their rates. Therefore, Intervenors will be directly affected by this Commission's decision in the consolidated dockets and they may suffer injury-in-fact that is both real and sufficiently immediate, and not speculative or conjectural.

The Intervenors meet the second prong of Agrico. In this proceeding, the Commission must consider the most cost-effective renewable measures that could be utilized, which will ultimately impact the rates charged to Intervenors. Intervenors are appropriately utilizing this proceeding to argue that the Seminole Facility and Shady Hills Facility could utilize less costly and more cost-effective means to address its energy needs.

Because the Intervenors meet the two-prong standing test established in Agrico, it appears that the Intervenors' substantial interests may be affected by these proceedings, as required by Chapter 120, F.S. Therefore, the Motion to Intervene shall be granted for Docket Nos. 20170266-EC and 20170267-EC. Notwithstanding the granting of intervention, I remind the Intervenors that issues shall be limited to those appropriate to the scope of a determination of need. The Intervenors take the case as they find it.

Therefore, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Michael Tulk and Patrick Daly is hereby granted. It is further

ORDERED that Michael Tulk and Patrick Daly are granted intervention in both Docket Nos. 20170266-EC and 20170267-EC. It is further

ORDERED that all parties to these proceedings shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

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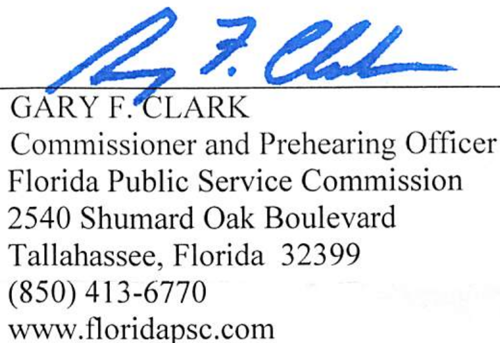
By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 24th day of January, 2018.



GARY F. CLARK
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SAC

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.