

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of standard offer contract for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Progress Energy Florida, Inc.

DOCKET NO. 070235-EQ
ORDER NO. PSC-07-0956-PCO-EQ
ISSUED: November 30, 2007

ORDER DENYING MOTION TO STRIKE PORTIONS OF
PETITION TO INTERVENE AND PROTEST

On June 11, 2007, this Commission issued Order No. PSC-07-0493-TRF-EQ, approving the standard offer contract and associated tariffs proposed by Progress Energy Florida, Inc. (PEF) for energy and capacity purchases from renewable energy and small qualifying facilities. The contract was submitted for approval pursuant to Section 366.91, Florida Statutes, and Rules 25-17.0832 and 25-17.200 through 25-17.310, Florida Administrative Code (F.A.C.).

On July 2, 2007, White Springs Agricultural Chemicals, Inc. d/b/a White Springs (PCS Phosphate) filed a Petition to Intervene, Protest of Agency Action, and Petition for Formal Administrative Hearing, challenging the Commission's approval of PEF's standard offer contract and associated tariffs. On August 29, 2007, PEF filed a motion to strike portions of PCS Phosphate's Petition to Intervene and Protest. On September 5, 2007, PCS Phosphate responded in opposition to the motion.

Rule 28-106.211, Florida Administrative Code, grants 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" Based upon this authority, and having considered the motion and response, my findings are set forth below.

PEF's Motion

In its motion to strike, PEF alleges generally that the PCS Phosphate petition raises many issues that are inappropriate and beyond the scope of this proceeding, and specifically asks that 13 portions of the petition be struck. The specific portions of the petition challenged are identified in the motion as portions of paragraphs 6, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20 and 21. PEF's basic arguments as to why these provisions should be struck is that they raise issues which are an attempt to challenge the Commission's policy on renewable energy contracts set forth in Rules 25-17.200 through 25.17.310, F.A.C, or are an attempt to challenge the utility's Ten Year Site Plan (TYSP) by way of this docket, but are not a true challenge to the approval of the Standard Offer Contract, and are therefore inappropriate.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

PCS' Phosphate Response

In its response, PCS Phosphate alleges that the challenged provisions of its petition are all relevant and germane to consideration of the approval of the Standard Offer Contracts. PCS Phosphate particularly objects to the attempt to strike the portions of the petition that reference the TYSP, since the TYSP is specified as the basis for determining capacity and energy payments to renewable energy producers pursuant to Rule 25-17.250, F.A.C., and is therefore fundamental to encouraging participation by renewable suppliers. PCS Phosphate argues that if there is no opportunity to challenge the terms and effects of the Standard Offer Contract in this docket, then it would be left without any remedy.

Findings and Analysis

Upon review of the pleadings and the motion to strike and response thereto, I find it appropriate to deny PEF's motion to strike portions of the petition, except to the extent that the petition is construed to attack the substance and not the application of Rules 27-17.0832, 25-17.200 through 25.17-310, F.A.C., and the TYSP to these standard offer contracts. At this preliminary stage of the proceedings, prior to a hearing or the filing of any testimony, portions of a petition should only be struck if it is clear on the face of the petition that the portions of the petition objected to will, as a matter of law, not be germane to the proceeding.

It appears that most of the challenged provisions are arguably germane to a consideration of the Commission's approval of the Standard Offer Contracts. Some of the challenged provisions, however, also appear susceptible to an interpretation that they are challenging certain requirements of the administrative rules on Standard Offer Contracts. In particular, some of the challenged language could be interpreted as challenging the rule requirements as to how utilities should create and submit their TYSP, and how the Commission is to consider the TYSP pursuant to Rule 25-22.701, F.A.C. Additionally, some of the petition could be interpreted as challenging the prices established for the standard offer contract based on a utility's TYSP as required by Rule 25-17.250, F.A.C. Rule challenges do not properly lie in this docket, and matters challenging PSC rule requirements and not the application of those rules to the standard offer contract will not be entertained in this proceeding.

However, with that clarification, I find that it is premature to strike any portions of the petition at this stage of the proceeding, as most challenged portions appear to be susceptible to an arguably germane reading.

Based on the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that PEF's motion to strike portions of the petition is denied as set forth herein. The parties shall be on notice that this docket is not the appropriate venue for, and will not entertain, untimely and inappropriate rule challenges.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 30th day of November, 2007.



NANCY ARGENZIANO
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 25-22.060, 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.