

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of renewable energy tariff standard offer contract, by Florida Power & Light Company.

DOCKET NO. 070234-EQ

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

In re: Petition for approval of standard offer contract for small qualifying facilities and producers of renewable energy, by Tampa Electric Company.

DOCKET NO. 070236-EQ

ORDER NO. PSC-07-1013-PCO-EQ

ISSUED: December 21, 2007

ORDER GRANTING INTERVENTION

On August 9, 2007, the City of Tampa (City) filed a Petition for Leave to Intervene as a full party in interest to the captioned proceedings.¹ Pursuant to Order No. PSC-07-0962-PCO-EQ, issued December 3, 2007, this matter has been scheduled for a hearing April 10-11, 2008.

Petition for Intervention

According to the City, it owns a municipal solid waste facility known as the McKay Bay Facility, which generates electricity and is a Renewable Energy Facility pursuant to Commission rules and Florida Statutes. The City states that the facility is also a Qualifying Facility pursuant to Federal Law.

In its petition, the City states that it is entitled to intervene in this matter based on the McKay Bay operations. The City asserts that the heat produced in the incineration process at McKay Bay is recovered to produce steam for use in a 22 mW steam turbine-generator. The City also states that it sells renewable energy/electricity pursuant to two contracts for firm energy and capacity totaling 19.5 mW of committed capacity, and those contracts expire in 2011, thereby allowing the City to sell capacity and/or energy beginning in 2011 pursuant to the Standard Offer Contracts that are the subject of these proceedings.

In addition to the existing facility, the City states that there is the possibility that its electric generating capacity may be expanded, or that the City would construct one or more

¹ City of Tampa also filed a motion to intervene in related Docket No. 070232-EQ, In re: Petition for approval of new standard offer for purchase of firm capacity and energy from renewable energy producer or qualifying facility less than 100 kW tariff, by Gulf Power Company. Docket No. 070232-EQ has since been closed for petitioner's failure to file an amended petition pursuant to Order No. PSC-07-0924-CO-EQ, issued November 19, 2007.

DOCUMENT NUMBER-DATE

11132 DEC 21 5

FPSC-COMMISSION CLERK

additional facilities. Also, the City states that it consumes substantial quantities of electricity purchased from Tampa Electric Company.

No party has objected to the City's Motion for Intervention, and the time for doing so has expired.

Standards of Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, 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), Florida Administrative Code, 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 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. 2d DCA 1981). The intervenor must show (1) that he will suffer an 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. 3d 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 & Rulings

It appears that the City meets the two prong standing test in Agrico. The City is a renewable energy facility as defined by Commission rule, and as such, has an interest in the outcome of this proceeding as a supplier of renewable energy pursuant to the standard offer contracts. Should the standard offer contracts deviate from the Commission's rules, the intervenor will likely suffer.

The City's petition for leave to intervene could also be interpreted as challenging the rule requirements as to how utilities should create and submit their Ten Year Site Plan (TYSP), and how the Commission is to consider the TYSP pursuant to Rule 25-22.701, F.A.C. The petition could also 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. The City is on notice that rule challenges or challenges to the TYSP do not properly lie in this docket, and such matters will not be entertained in this proceeding. See Order No. PSC-07-0956-PCO-EQ.

The City is reminded that as an intervenor, the City takes this case as it finds it.

Therefore, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the Petition to Intervene filed by the City of Tampa, Florida is hereby granted as set forth in the body of this order. 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:

Richard A. Zambo, P.A.
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34996
Telephone: (772) 225-5400
Facsimile: (772) 232-0205

Jon C. Moyle, Jr.
118 N. Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile (850) 681-8788

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 21st day of
December, 2007.



NANCY ARGENZIANO
Commissioner and Prehearing Officer

(S E A L)

JEH

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.