

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc. | DOCKET NO. 080148-EI
| ORDER NO. PSC-08-0253-PCO-EI
| ISSUED: April 23, 2008

ORDER GRANTING INTERVENTION

On March 11, 2008, Progress Energy Florida, Inc. (PEF) filed a petition for determination of need for Levy Units 1 and 2 nuclear power plants in Levy County pursuant to Sections 366.04 and 403.519, Florida Statutes (F.S.), and Rules 25-22.080, 25-22.081, and 28-106.201, Florida Administrative Code (F.A.C). By Order No. PSC-08-0151-PCO-EI, issued March 12, 2008, the matter has been scheduled for a formal administrative hearing on May 21-23, 2008.

Petition for Intervention

By petition dated April 11, 2008, Southern Alliance for Clean Energy (SACE) filed a Petition to Intervene (Petition) in this docket. According to SACE, it is a non-profit organization that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including in the State of Florida. According to SACE, it has more than 400 members living in PEF's service area and 1,781 members in Florida overall. In its petition, SACE states that a substantial number of its members reside in the area that is served by and would be affected by the proposed PEF plant, and that these members would be substantially affected by the proposed PEF nuclear power plant.

In its petition, SACE contends that it is entitled to intervene in this matter based on the following assertions: (1) as consumers of electricity in the PEF service area, some SACE members' substantial interests will be directly affected by the Commission's decision whether to permit the proposed plants because PEF's participation in the plants will impact the rates that will be charged to these petitioners; (2) SACE members will be directly affected by the cost impacts of new nuclear power plants; (3) SACE members will be directly affected by the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand side alternatives; and (4) construction of the plants would shift the risks and obligations associated with a new nuclear plant to its members and PEF's ratepayers.

PEF's Response

In its response, PEF does not object to SACE's participation as a party; however, PEF does not agree or support the issues as framed by SACE in its Petition. PEF argues that the issues set forth in Appendix A to the Order Establishing Procedure accurately reflect the issues that must be considered by the Commission pursuant to Section 403.519, F.S. Thus, PEF contends that nothing more is needed or is at issue in this proceeding.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Standards of Intervention

Pursuant to Rule 25-22.039, F.A.C., 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), F.A.C., 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 set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981). The intervenor must show (1) that he will suffer 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. 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).

Further, the test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Analysis & Ruling

It appears that SACE meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. With respect to Agrico, it appears that SACE's interests are of sufficient immediacy to entitle it to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, SACE, on behalf of its affected Florida members, asserts that as retail electric customers of PEF, their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant, because if approved, PEF's construction of the plants will impact the rates PEF will charge these petitioners (see SACE's first and second assertions). With respect to the second prong of the associational standing test, the subject matter of the proceeding is within SACE's general scope of interest and

activity. SACE contends that its members will be directly affected by the inappropriate reliance on new capacity instead of considering other alternatives (see SACE's third and fourth assertions). In need determination proceedings, the Commission considers whether the proposed plant is the most cost-effective alternative available. As for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent the interests of its members. Based on the foregoing analysis, SACE's standing in this docket has been established.

Because SACE meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. SACE's petition for intervention shall be granted as set forth herein. Issue development is an ongoing process; while issues should be germane to this proceeding, disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference. Pursuant to Rule 25-22.039, F.A.C., the petitioner takes the case as it finds it.


Based on the foregoing, it is

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that the Petition to Intervene is granted with respect to Southern Alliance for Clean Energy as set forth herein. 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 docket, to:

E. Leon Jacobs, Jr.
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1720 S. Gadsden St. MS 14, Suite 201
Tallahassee, Florida 32301
(850) 222-1246
(850) 599-9079 fax
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By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 23rd day of April, 2008.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

(SEAL)

KEF

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.