

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine need for West
County Energy Center Unit 3 electrical power
plant, by Florida Power & Light Company.

DOCKET NO. 080203-EI

In re: Petition for determination of need for
conversion of Riviera Plant in Palm Beach
County, by Florida Power & Light Company.

DOCKET NO. 080245-EI

In re: Petition for determination of need for
conversion of Cape Canaveral Plant in Brevard
County, by Florida Power & Light Company.

DOCKET NO. 080246-EI

ORDER NO. PSC-08-0603-PCO-EI

ISSUED: September 17, 2008

ORDER DENYING AMENDED PETITION TO INTERVENE

On June 17, 2008, Order No. PSC-08-0398-PCO-EI was issued denying Mr. Panagioti Tsolkas and the Palm Beach County Environmental Coalition (PBCEC) intervenor status in these consolidated dockets. The Order stated that neither Mr. Tsolkas nor PBCEC had demonstrated the necessary individual or associational standing to participate as parties in the proceeding. The formal administrative hearing in the dockets was held on June 23, 2008. Four days after the hearing, on June 27, 2008, Mr. Tsolkas filed Amended Comments from the Palm Beach County Environmental Coalition, in which he repeated his request to intervene on behalf of himself and PBEC and added a request that Ms. Alexandria Larson be granted intervenor status as an individual and as a member of PBCEC. The petition alleged that Ms. Larson was a customer of Florida Power & Light Company (FPL) in Loxahatchee, Palm Beach County, Florida. Mr. Tsolkas did not request reconsideration of Order No. PSC-08-0398-PCO-EI, as the Order provided.

Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981) prescribes a two-prong test for determining whether a person has a substantial interest that is subject to determination or will be affected through the proceeding. That test requires a demonstration that: first, the person will suffer an injury in fact of sufficient immediacy to entitle participation as a party in the proceeding, and second, that the injury is of a type or nature which the proceeding is designed to protect. If both prongs of the Agrico test are not met the person does not have standing to participate as a party in a formal administrative hearing.

Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker's Rights Organization, Inc. v. Dept. of Health and Rehabilitative Svcs., 417 So. 2d 753 (Fla. 1st DCA 1982), apply the Agrico test to associations, and also require that an association requesting intervention must show that a substantial number of its members will be substantially affected by the results of the proceeding, the subject matter of the proceeding is

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within the group's general scope of interest, and the relief requested is of the type appropriate for an organization to receive on behalf of its members. Furthermore, Rule 28-106.106, F.A.C. provides that an association must be represented by an attorney who is a member of the Florida Bar, a duly designated law student, or an individual duly authorized as a Qualified Representative, to participate in a formal administrative proceeding.

Mr. Tsolkas is not a customer of FPL. The Amended Comments do not allege any additional facts to show that he has a substantial interest that will be affected by the outcome of the proceeding or that his interest is one this need determination proceeding is designed to protect. The petition does not allege any facts to show that PBEC's participation as a party meets either prong of the Agrico test or the associational standing requirements of Florida Home Builders and Farmworker's. Furthermore, the Amended Comments provided no additional information or allegations to demonstrate that Mr. Tsolkas is duly authorized to represent PBCEC in proceedings before this Commission.

Ms. Larson's petition was not timely filed. Rule 25-22.039, F.A.C. provides that a request to intervene as a party to a Commission hearing must be filed at least 5 days before the hearing, and here the Amended Comments were filed 4 days after the hearing was held. In effect, participation as a party in the proceeding is moot at this point. I would note that Ms. Larson was present at the hearing and that she provided public testimony in opposition to FPL's proposed projects at that time. Her testimony is part of the record of the proceeding.

For the reasons stated above, I deny the amended petition to intervene found in Mr. Tsolkas's Amended Comments.

Based upon the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as prehearing officer, that the Petition for Intervention filed by Panagioti Tsolkas and the Palm Beach County Environmental Coalition is denied.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 17th day of September, 2008.


LISA POLAK EDGAR
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.