

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of solar energy power purchase agreement between Tampa Electric Company and Energy 5.0, LLC. || DOCKET NO. 090109-EI
ORDER NO. PSC-09-0818-PCO-EI
ISSUED: December 14, 2009

ORDER GRANTING INTERVENTION

On March 9, 2009, Tampa Electric Company (TECO or Company) filed a petition requesting approval of a purchased power agreement with Energy 5.0, LLC (Energy 5.0). The agreement, executed on February 25, 2009, is based on TECO purchasing the entire net electrical output of Energy 5.0's Florida Solar I Facility for a period of 25 years beginning on January 1, 2011. Energy 5.0 will sell as-available energy produced by the facility to TECO at a price per megawatt-hour that is fixed for the term of the agreement.

On November 23, 2009, Mosaic Fertilizer, LLC (Mosaic) filed its petition to intervene in the docket. On November 24, 2009, TECO filed a response to Mosaic's petition to intervene.

Petition for Intervention

According to its petition, Mosaic is a manufacturer of phosphate fertilizer products with chemical plants, mines, and related operations located within TECO's service area. Mosaic purchases electricity from TECO at multiple locations under a number of rate schedules. In this proceeding, TECO requests the Commission's approval of its agreement with Energy 5.0, and authorization to collect costs associated with the agreement from its retail customers. Mosaic states that it has a substantial interest in this proceeding to ensure that the rates it pays to TECO are just, reasonable, and consistent with applicable law.

TECO's Response

In its response, TECO states that it does not oppose Mosaic's participation as an intervenor in this proceeding.

Standard for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code (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.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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, F.S., 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).

Analysis & Ruling

It appears that Mosaic meets the two-prong standing test in Agrico, 406 So. 2d at 482. Mosaic is a customer of TECO with operations located within TECO's electric service territory, and its interests may be substantially affected by this proceeding. Therefore, its petition shall be granted as set forth herein. Pursuant to Rule 25-22.039, F.A.C., Mosaic takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner David E. Klement, as Prehearing Officer, that the petition to intervene filed by Mosaic Fertilizer, LLC 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
Richard A. Zambo, P.A.
2336 S.E. Ocean Blvd., #309
Stuart, Florida 34996
Phone: (772) 221-0263
FAX: (772) 283-6756

By ORDER of Commissioner David E. Klement, as Prehearing Officer, this 14th day of December, 2009.


DAVID E. KLEMENT
Commissioner and Prehearing Officer

(S E A L)

JSB

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.