

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition to determine need for Gainesville Renewable Energy Center in Alachua County, by Gainesville Regional Utilities and Gainesville Renewable Energy Center, LLC.

DOCKET NO. 090451-EM
ORDER NO. PSC-10-0136-PCO-EM
ISSUED: March 8, 2010

ORDER GRANTING PETITION TO INTERVENE

On September 18, 2009, Gainesville Regional Utilities (GRU) and Gainesville Renewable Energy Center, LLC. (GREC LLC), filed a joint petition for a determination of need for a proposed biomass-fired electric generating facility (GREC Project) to be located at GRU's existing Deerhaven plant site in Alachua County, Florida. The petition was filed pursuant to section 403.519, Florida Statutes (F.S.), and Rule 25-22.081, Florida Administrative Code (F.A.C.). A public hearing on the matter was held in Gainesville, Florida, on December 9, 2009, and a formal administrative hearing was held on December 16, 2009, where the parties entered testimony and exhibits into the record. At the time the hearing was held, no substantially interested persons had petitioned to intervene.

At the Agenda Conference on February 9, 2010, the Commission considered the staff's recommendation regarding the petition for determination of need. At the Agenda Conference, GRU/GREC LLC requested that the Commission defer consideration of the recommendation and allow for a limited reopening of the record to receive supplemental testimony and exhibits. GRU/GREC LLC waived all statutory and rule time requirements related to its joint petition. Pursuant to Order No. PSC-10-0135-PCO-EM, issued March 8, 2010, a hearing date to receive the supplemental testimony and exhibits is scheduled for April 15, 2010.

On March 3, 2010, a Status Conference was held to establish the schedule for the entrance of additional evidence into the hearing record, and to consider any other matters that may aid in the efficient disposition of this case. Prior to the Status Conference, Dian R. Deevey filed a petition to intervene in this case. Ms. Deevey states that she is representing herself, *pro se*, and requests permission to intervene pursuant to Rule 25-22.039, Florida Administrative Code (F.A.C.). GRU/GREC LLC responded to her petition at the Status Conference.

Petition for Intervention

According to her petition, Ms. Deevey asserts that she is a GRU customer and resident of Alachua County. As a GRU customer, Ms. Deevey asserts that her substantial interests are subject to determination or will be affected by this proceeding. Ms. Deevey further asserts that she will be significantly affected by the proposed GREC Project, potentially adversely. In Ms. Deevey's petition, she requested that certain additional issues included in her petition to intervene be considered at the April 15, 2010, hearing.

DOCUMENT NUMBER-DATE

01580 MAR-8 2010

FPSC-COMMISSION CLERK

GRU/GREC LLC's Response

At the Status Conference, GRU/GREC LLC stated they did not object to Ms. Deevey's intervening in this proceeding, but objected to some of the additional issues she was attempting to raise.

Standard for 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, 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 Ms. Deevey meets the two-prong standing test in Agrico, 406 So. 2d at 482. Ms. Deevey is a customer of GRU within GRU's electric service territory, and her interests may be substantially affected by this proceeding. Therefore, Ms. Deevey's petition shall be granted in part and limited as set forth herein.

Pursuant to Rule 25-22.039, F.A.C., Ms. Deevey takes the case as she finds it. As noted above, at GRU/GREC LLC's request, the Commission allowed a limited reopening of the record. Under the Commission's Rule, Ms. Deevey's petition to intervene would be untimely but for the Commission's granting of an additional hearing date for a limited reopening of the record. It is also noted that GRU/GREC LLC did not object to Ms. Deevey's intervention. Because GRU/GREC LLC are limited in the scope of the supplemental testimony and exhibits they may file, Ms. Deevey's intervention shall likewise be limited. Any testimony and exhibits Ms. Deevey pre-files for the April 15, 2010, hearing shall be limited to responding to the supplemental testimony and exhibits which GRU/GREC LLC files on March 15, 2010. With

regards to issues identified in Prehearing Order No. PSC-09-0814-PHO-EM, issued December 10, 2009, which will be updated prior to this additional hearing, Ms. Deevey will be limited to taking "No position at this time." Ms. Deevey does not waive the right to identify her positions on the issues in her post-hearing brief. Similarly, GRU/GREC LLC may identify different positions in its post-hearing brief; however, GRU/GREC LLC's positions in the updated Prehearing Order will remain the same as previously identified in Prehearing Order No. PSC-09-0814-PHO-EM. Post-hearing briefs for all parties shall be based on evidence in the final record.

Attached to Ms. Deevey's petition to intervene was a list of issues that she requested be considered at the additional hearing. Issues 2, 3, and 6 are identical to those already identified in Order No. PSC-09-0814-PHO-EM; therefore, this portion of her request is moot. In her Issues 4 and 5, Ms. Deevey is attempting to expand the current issues beyond the scope of section 403.519, F.S., and Rule 25-22.081, F.A.C.; therefore, Ms. Deevey's request shall be denied. In her Issues 7 through 10, Ms. Deevey is attempting to raise issues that are political, legislative, or speculative in nature and clearly outside of the scope of the need determination statute and the Commission's jurisdiction; therefore, Ms. Deevey's request shall be denied.

For the reasons, Ms. Deevey's petition shall be granted in part and limited as set forth herein, and, consistent with Rule 25-22.039, F.A.C., she takes the case as she finds it.

Therefore, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by Dian R. Deevey 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:

Dian R. Deevey
1702 SW 35 Place
Gainesville, FL 32608

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 8th day of March, 2010.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(S E A L)

ELS

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.