

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-10-0204-PCO-EI
ISSUED: April 2, 2010

ORDER GRANTING INTERVENTION

On March 9, 2009, Tampa Electric Company (TECO or Company) filed a petition requesting approval of a purchased power agreement (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 (Solar Facility) for a period of 25 years beginning on January 1, 2011. Energy 5.0 will sell as-available energy produced by the Solar Facility to TECO at a price per megawatt-hour that is fixed for the term of the agreement. By Order No. PSC-09-0818-PCO-EI, issued December 14, 2009, Mosaic Fertilizer, LLC (Mosaic), a manufacturer of phosphate fertilizer products with chemical plants, mines, and related operations located within TECO's service area, was granted intervention in this docket.

By Order No. PSC-10-0057-PAA-EI, issued January 25, 2010, the Commission approved the Agreement. By Order No. PSC-10-0138-PCO-EI, issued March 10, 2010, the Commission vacated its prior order and set this matter for evidentiary hearing on June 30 – July 1, 2010.

On March 12, 2010, Energy 5.0 filed its petition to intervene in the docket. On March 12, 2010, via email, TECO indicated that it did not object to Energy 5.0's intervention. On March 15, 2010, via email, Mosaic indicated that it did not object to Energy 5.0's intervention.

Petition for Intervention

According to its petition, Energy 5.0 was the successful bidder in TECO's 2007 Renewable Generation Request for Proposals, and subsequently executed a 25-year Agreement with TECO. Energy 5.0 asserts that it is a partner with TECO in the Agreement and it will develop and operate the Solar Facility pursuant to that contract.

Energy 5.0 asserts the Commission will determine whether to approve the Agreement between TECO and Energy 5.0 for cost recovery pursuant to Commission Rule 25-17.00832, Florida Administrative Code (F.A.C.) and applicable statutes. As the developer and operator of the Solar Project, Energy 5.0's substantial interests in the Agreement and Solar Facility will be determined by this proceeding. As such, Energy 5.0 asserts that its substantial interests are of sufficient immediacy to entitle it to participate in this proceeding and it has the type of interests which this proceeding is designed to protect. Therefore, Energy 5.0 requests that it be granted intervention.

While the Commission's Case Management System records Energy 5.0 as a party of record in this docket, Energy 5.0 asserts that it was not formally a party to TECO's petition before the Commission for approval of the Agreement. Since Energy 5.0 has not otherwise been

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formally granted party status in this docket, Energy 5.0 is filing this petition to ensure there is no procedural obstacle to Energy 5.0's participation in any further proceedings.

TECO and Mosaic's Responses

In responses via email, TECO and Mosaic state that they do not oppose Energy 5.0's request for intervention in this docket.

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, Florida Statutes (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 prong 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 Energy 5.0 satisfies the two-prong standing Agrico test. Energy 5.0 has contracted with TECO to develop and operate the Solar Facility for 25 years, and Energy 5.0's interests may be substantially affected by the outcome of this proceeding. Therefore, its petition shall be granted as set forth herein. Pursuant to Rule 25-22.039, F.A.C., Energy 5.0 takes the case as it finds it.

Based on the foregoing, it is therefore

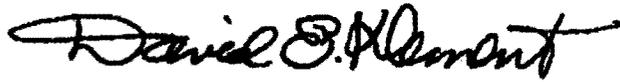
ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by Energy 5.0, LLC is hereby granted. It is further

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:

Robert Scheffel Wright / John T. LaVia, III
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301

Energy 5.0, LLC
1601 Forum Place, Suite 1010
West Palm Beach, FL 33401

By ORDER of Commissioner David E. Klement, as Prehearing Officer, this 2nd day of April, 2010.



DAVID E. KLEMENT
Commissioner and Prehearing Officer

(S E A L)

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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 25-22.0376, 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.