

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for modification to determination of need for expansion of an existing renewable energy electrical power plant in Palm Beach County by Solid Waste Authority of Palm Beach County and Florida Power & Light Company, and for approval of associated regulatory accounting and purchased power agreement cost recovery.

DOCKET NO. 110018-EU
ORDER NO. PSC-11-0147-PCO-EU
ISSUED: March 3, 2011

ORDER GRANTING FRANK WOODS AND KELLY SULLIVAN'S
PETITION TO INTERVENE

Procedural Background

On January 7, 2011, the Solid Waste Authority of Palm Beach County ("SWA") and Florida Power & Light Company ("FPL") filed a Joint Petition for Modification to a Determination of Need and for Recovery of Purchased Power Contract Costs ("Joint Petition"). In the Joint Petition, SWA and FPL seek to modify or supplement the previously issued determination of need for electrical generating capacity at SWA's existing Palm Beach County municipal solid waste process and disposal site by adding an additional 93 MW of renewable energy fueled electrical generating capacity. The Joint Petition further seeks the Commission's approval of a purchase power agreement, advanced funding for SWA for construction of the expanded solid waste facility, and associated regulatory accounting and cost recovery treatment for FPL. The Joint Petition is currently set for hearing on April 25, 2011.

On February 21, 2011, Mr. Frank Woods and Mrs. Kelly Sullivan, Esq. (husband and wife) filed a Petition to intervene in this Docket ("Petition to Intervene"). In the Petition to Intervene, Mr. Woods and Mrs. Sullivan assert standing under Rules 25-22.039 and 28-106.205, Florida Administrative Code ("F.A.C.") and *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981) ("Agrico") and argue their grounds therefore.

On February 28, 2011, SWA and FPL filed a Joint Response in Opposition to the Petition to Intervene.

Petition for Intervention

Mr. Woods and Mrs. Sullivan assert that they are residential customers of FPL. They further state that they have a substantial interest in this proceeding as its resolution will impact their electric rates,¹ and that this interest is of the type that this proceeding is designed to protect.

¹ Whether there will be an impact on customer rates is an issue that will be addressed during the hearing.

DOCUMENT NUMBER-DATE

01449 MAR-3 =

FPSC-COMMISSION CLERK

The petition goes on to allege and express concern on other points superfluous to a determination regarding intervenor status.

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).

Ruling

After having considered the Petition for Intervention and all arguments in opposition, it appears that Mr. Woods and Mrs. Sullivan meet the two-prong standing test set forth in Agrico, in that they are customers of FPL and their interests may be substantially affected by this proceeding.

This Commission has a long history of granting intervention to residential customers of utilities subject to its regulation.² Per Rule 25-22.039, F.A.C., intervenors must take the case as they find it. Intervenors in this proceeding are directed to comply with all standards, rules, statutes, and procedures that apply to and are expected of all other parties, and shall be required to stay within the scope of this proceeding as it has been and will be established.

² For example, see Order No. PSC-10-0137-PCO-EM, Issued March 8, 2010, in Docket No. 090451-EM (granting intervention to residential customer of electric utility); Order No. PSC-01-1121-PCO-WU, Issued May 16, 2001, in Docket No. 010503-WU (granting intervention to residential customer based on possibility of higher rates); contrast with Order No. PSC-08-0398-PCO-EI, Issued June 17, 2008, in Docket No. 080246-EI (denying intervention to individual who was not a customer of utility); Order No. PSC-05-0301-PCO-WU, Issued March 18, 2005, in Docket No. 050018-WU (denying intervention to former customer of utility).

Based on the foregoing, it is

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that the Petition to Intervene filed by Frank Woods and Kelly Sullivan 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:

Kelly Sullivan – Attorney at Law
570 Osprey Lakes Circle
Chuluota, Florida 32766-6658
Kelly.sullivan.woods@gmail.com

It is further

ORDERED that Frank Woods and Kelly Sullivan take the case as they find it.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 3rd day of March, 2011.



LISA POLAK EDGAR
Commissioner and Prehearing Officer

(S E A L)

LDH

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.