

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited
proceeding to restructure rates
by St. Joe Natural Gas Company,
Inc.

DOCKET NO. 970115-GU
ORDER NO. PSC-97-1014-FOF-GU
ISSUED: August 25, 1997

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

ORDER GRANTING MOTION TO DISMISS
AND CLARIFYING PAA ORDER

BY THE COMMISSION:

On January 27, 1997, St. Joe Natural Gas Company, Inc., (St. Joe) filed a Petition for Limited Proceeding to Restructure Rates. By Order No. PSC-97-0526-FOF-GU, issued May 7, 1997, as proposed agency action (PAA Order), we approved St. Joe's rate restructuring proposal. The PAA Order includes language concerning the contractual relationship between St. Joe and Florida Coast Paper Company, L.L.C. (FCPC). There is currently a dispute between St. Joe and FCPC concerning FCPC's obligation to perform under certain contracts entered into by St. Joe and St. Joe Forest Products, a company purchased by FCPC.

On May 28, 1997, FCPC filed a Petition on Proposed Agency Action (Petition) and Request for Amendment or Clarification. Through these pleadings, FCPC requested that we amend our PAA Order to remove the language concerning its contractual relationship with St. Joe or, alternatively, that we clarify we did not intend to make any findings or express any views regarding the contractual relationship between the companies. St. Joe filed a Motion to Dismiss FCPC's Petition and Request for Amendment of Clarification on June 23, 1997. FCPC timely filed a response to St. Joe's Motion to Dismiss.

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FPSC-RECORDS/REPORTING

St. Joe bases its Motion to Dismiss on the grounds that FCPC does not have standing to protest the PAA Order or to request amendment or clarification of the PAA Order. In considering St. Joe's Motion to Dismiss, we must view the facts set forth in FCPC's Petition in the light most favorable to FCPC in order to determine if FCPC's request is cognizable under the provisions of Rule 25-22.029, Florida Administrative Code, and Chapter 120, Florida Statutes. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

Rule 25-22.029(4), Florida Administrative Code, provides that "[o]ne whose substantial interests may or will be affected by the Commission's proposed agency action may file a petition for a \$120.57 hearing" In its Petition, FCPC states that its substantial interests will be affected by the PAA Order because language in the PAA Order concerning FCPC's contractual relationship with St. Joe could be misconstrued in potential litigation with St. Joe. FCPC expressly states in its Petition that it does not object to the portion of the PAA Order approving St. Joe's request to restructure rates.

In its Motion to Dismiss, St. Joe argues that FCPC has failed to assert a sufficient interest to establish standing to initiate a formal proceeding under Section 120.57, Florida Statutes. To establish standing to initiate a formal administrative proceeding, FCPC must demonstrate that its substantial interests are affected by the PAA Order. To demonstrate that its substantial interests are affected, FCPC must show (1) that it will suffer injury in fact which is of sufficient immediacy to entitle it to a formal proceeding, and (2) that the injury is of a type or nature which the proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 1st DCA 1981).

St. Joe argues that FCPC cannot satisfy the first prong of the Agrico test because FCPC failed to allege that the PAA Order will subject it to any injury of sufficient immediacy to entitle it to a formal proceeding. St. Joe emphasizes that FCPC's Petition states that the portion of the PAA Order describing the relationship between St. Joe and FCPC potentially could be misconstrued or prejudicial. St. Joe also notes that FCPC does not allege it will suffer any economic injury other than potential economic injury.

In its Response, FCPC argues that its interests do not lack immediacy and are not speculative. FCPC points out that St. Joe has filed a lawsuit in circuit court against the prior owner of the paper mill in which it alleges that FCPC breached a contract that it assumed from the mill's prior owner. FCPC asserts that the prior owner has indicated that it will seek indemnification from FCPC if held liable for damages. FCPC states that St. Joe's circuit court allegations treat subjects alluded to in our PAA Order.

St. Joe argues that FCPC cannot satisfy the second prong of the Agrico test because FCPC's claimed interest is not the kind designed to be protected by this Commission in a proceeding to restructure a utility's rates. St. Joe asserts that this type of proceeding is designed to protect the utility's interest in obtaining a fair rate of return and the ratepayers' interest in paying fair and reasonable rates. FCPC contends that it should always be this Commission's objective to ensure that our orders are properly interpreted.

Upon review, we find that FCPC's claimed substantial interest does not satisfy either prong of the Agrico test. First, the potential that the PAA Order could possibly be misconstrued in the future by a circuit court is not an injury of sufficient immediacy to entitle FCPC to standing under Agrico. FCPC can only speculate as to the effect that the PAA Order may have on future litigation involving FCPC. See Village Park Mobile Home Association v. State, Department of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process).

Second, FCPC's claimed injury is not the type of injury that a proceeding on rate restructuring is designed to protect. As St. Joe asserted, this type of proceeding is designed to protect the utility's interest in obtaining a fair rate of return and the ratepayers' interest in paying fair and reasonable rates. In its Petition, FCPC does not allege that its substantial interests as a ratepayer are affected by the PAA Order; FCPC only alleges that its substantial interests as a potential litigant may be affected.

In its Response, FCPC acknowledges that a formal proceeding is unnecessary to obtain the relief it desires. FCPC states that its Petition is intended only to serve as the required vehicle for its Request for Amendment or Clarification. We find, however, that

because FCPC lacks standing to initiate a formal proceeding to challenge the PAA Order, FCPC also lacks standing to request amendment or clarification of the PAA Order. We believe that granting FCPC's Request for Amendment or Clarification would set an unwise precedent of allowing any entity, including a competitor, supplier, or customer, regardless of standing, to seek amendment or clarification of language in orders issued by this Commission.

In summary, we find that FCPC's Petition, when viewed in the light most favorable to FCPC, fails to state a cause of action upon which we may grant relief, because FCPC fails to allege an adequate basis for its standing in this docket.

In these circumstances, however, we believe it is appropriate to clarify, on our own motion, that the following language at page 2 of our PAA Order is not intended to reflect any findings of this Commission regarding the contractual relationship between St. Joe and FCPC:

. . . In 1991, St. Joe and SJFPC [St. Joe Forest Products] entered into a service contract in which the customer agreed to purchase a minimum monthly quantity of gas from the company at interruptible rates . . .

. . . FCPC has contested its responsibility with regard to the original gas contract between St. Joe and SJFPC. As a result, FCPC has decreased its gas usage by approximately 50 percent of the contract amount. In addition, FCPC has notified St. Joe that it will no longer assume liability for \$120,000 in Florida Gas Transmission demand charges. In the event FCPC is determined not to have a contractual obligation, FCPC may find it more economical to burn an alternate fuel rather than pay St. Joe's high interruptible rates . . .

This language was intended only to describe the circumstances surrounding St. Joe's petition. The contractual dispute between St. Joe and FCPC was not before us.

ORDER NO. PSC-97-1014-FOF-GU
DOCKET NO. 970115-GU
PAGE 5

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that St. Joe Natural Gas Company's Motion to Dismiss Florida Coast Paper Company's Petition on Proposed Agency Action and Request for Amendment or Clarification is granted. It is further

ORDERED that the language in Order No. PSC-97-0526-FOF-GU, issued May 7, 1997, is clarified on the motion of the Florida Public Service Commission, as stated in the body of this Order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of August, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-97-1014-FOF-GU
DOCKET NO. 970115-GU
PAGE 6

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.