

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement  
regarding co-ownership of electrical  
cogeneration facilities in Hendry County by  
Southeast Renewable Fuels, LLC.

DOCKET NO. 130235-EQ  
ORDER NO. PSC-13-0507-PCO-EQ  
ISSUED: October 28, 2013

ORDER GRANTING INTERVENTION

On October 8, 2013, Glades Electric Cooperative, Inc. (Glades) timely filed a Motion for Leave to Intervene in this docket pursuant to Rule 28-105.0027, Florida Administrative Code (F.A.C.). Glades asserts that Southeast Renewable Fuels, LLC's (Southeast) jointly-owned generating entity will be located in Glades' historic service territory, and that Glades is entitled to intervene on the basis that it will suffer from uneconomic duplication of its facilities and loss of revenue, among other things, if the Commission erroneously determines that the arrangement proposed by Southeast constitutes self-generation because of an incomplete knowledge or understanding of the proposal. Glades alleges that its substantial interests will be immediately and adversely affected by such outcome, as Southeast will provide electric service to one or more unrelated entities that would otherwise be customers of Glades, and that this is a type of injury against which the proceeding is designed to protect.

Southeast responded in opposition to Glades' Motion for Leave to Intervene on October 15, 2013. Southeast argues that Glades' alleged impacts on its substantial interests are either unfounded or conjectural. Among other things, Southeast states that it and its confidential partner will serve themselves from jointly owned generating equipment and that Glades' assertion that these arrangements will reduce Glades' sales and uneconomically duplicate Glades' facilities is conjectural. Southeast would not object to Glades' participation as an amicus curiae.

Standard for Intervention

Pursuant to Rule 28-105.0027, F.A.C., "[p]ersons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene." Among other things, the motion to intervene shall contain "[a]llegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement."

To have standing, an intervenor must meet the two-prong standing test set forth in Agrico Chem. Co. v. Department of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) that he will suffer an 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 against 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 Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d 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) (finding that speculation on the possible occurrence of injurious events is too remote).

### Ruling

Glades asserts that Southeast seeks the issuance of a declaratory statement in this docket on the basis of insufficient facts necessary for us to know whether the resulting project will be self-generation or prohibited retail sales. Because Southeast's facilities are located in Glades' historic service territory, Glades' substantial interests may be affected by the outcome of this proceeding. See Order No. PSC-98-0074-FOF-EU, issued January 13, 1998, in Docket No. 971313-EU.<sup>1</sup> Therefore, I find it appropriate to grant the Motion for Leave to Intervene.

Pursuant to Rule 25-22.039, F.A.C., intervenors take the case as they find it. Intervenors are directed to comply with all standards, rules, statutes, and procedures that apply to and are expected of all other parties to the proceeding, and shall be required to stay within the scope of this proceeding as it has been and will be established.

Glades' Motion to Address the Commission on its Motion for Leave to Intervene, filed October 8, 2013, is denied as moot. Glades' Motion to Address the Commission on the merits of Southeast's Petition for Declaratory Statement will be determined at the agenda conference.

Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that the Motion for Leave to Intervene filed by Glades Electric Cooperative, Inc., 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:

Marsha E. Rule  
Rutledge Ecenia, P.A.  
119 South Monroe St., Suite 202  
Tallahassee, FL 32301  
Email: [marsha@rutledge-ecenia.com](mailto:marsha@rutledge-ecenia.com)  
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<sup>1</sup> In re: Petition of IMC-Agrico Company for a declaratory statement confirming non-jurisdictional nature of planned self-generation (granting intervention and finding that "[w]here our long-standing policy requires public utilities to anticipate territorial disputes and bring them to us for resolution, it would be inconsistent to characterize these allegations as lacking 'immediacy'" and that because "a major focus of Chapter 366 is the prevention of uneconomic duplication of utility facilities, it would be inconsistent to say that the 120.565 proceeding is not designed to protect against the type of injuries alleged or that those injuries lie outside the zone of interest of Chapter 366").

It is further

ORDERED that Glades Electric Cooperative, Inc.'s Motion to Address the Commission on its Motion for Leave to Intervene, filed October 8, 2013, is denied as moot.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 28th day of October, 2013.



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ART GRAHAM  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.