

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company.	DOCKET NO. 070650-EI ORDER NO. PSC-07-1019-PCO-EI ISSUED: December 28, 2007
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ORDER GRANTING INTERVENTION

On October 16, 2007, Florida Power & Light Company (FPL) filed a petition for determination of need for Turkey Point Units 6 and 7 electrical power plants in Dade County pursuant to Sections 366.04 and 403.519, Florida Statutes, and Rules 25-22.080, 25-22.081, and 28-106.201, Florida Administrative Code. By Order No. PSC-07-0869-PCO-EI, issued October 30, 2007, the matter has been scheduled for a formal administrative hearing on January 30 through 31, and February 1, 2008.

Petition for Intervention

By petition dated December 3, 2007, Jan and Bob Krasowski (Krasowskis) filed a Joint Petition to Intervene (Petition) in this docket. According to their Petition, the Krasowskis are customers of FPL and have been actively involved in efforts addressing resource protection, management, and efficiency for the past twenty years. The Krasowskis contend that, to the extent that the proposed Turkey Point Units affect local, regional, or state energy policy and rates for electrical power, their interests will be affected.

In support of their request, the Krasowskis state that as customers of FPL they dispute the need for the proposed plant taking into account system reliability and integrity, adequate electricity at a reasonable cost, fuel diversity and supply reliability pursuant to Section 403.519, Florida Statutes. The Krasowskis also believe that there are conservation measures available to FPL which might mitigate the need for the proposed plants. In addition, the Krasowskis also raise issues relating to (1) nuclear safety; (2) increasing the public's responsibilities and obligations without appropriate compensation under Rule 25-6.0423, Florida Administrative Code, the Nuclear Cost Recovery Rule; (3) the appropriateness and prudence of the use of nuclear technology; and (4) the Commission's jurisdiction over need determinations pursuant to the Florida Energy Efficiency Act (FEECA), Sections 366.80-366.85 and 403.519, Florida Statutes.

FPL's Response

In its response, FPL does not object to the Krasowskis' participation as a party; however, FPL argues that the Krasowskis' participation should be limited to those interests not represented by the Office of Public Counsel (OPC). FPL notes that the Krasowskis have identified the statutory elements required for a need determination and that a general examination of each element would be duplicative of Staff's and OPC's role in this docket. FPL further contends that

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the Krasowskis' interests as customers of FPL would be adequately represented by OPC, as OPC represents the interests of all retail customers.

In addition, FPL argues that the Krasowskis' participation should be limited to the issues that are within the Commission's jurisdiction, recognizing that the issues relating to nuclear safety, the merits of Rule 25-6.0423, F.A.C., the use of nuclear generation by electric utilities, and the Florida Energy Efficiency and Conservation Act are not proper for this proceeding. FPL argues that issues related to nuclear safety are not within the Commission's jurisdiction, but rather under the purview of the United States Regulatory Commission.

Next, FPL argues that Rule 25-6.0423, F.A.C., is irrelevant to the Commission's determination of need for Turkey Point 6 and 7 and that any concerns relating to the rule should have been raised during the rulemaking proceeding. As such, FPL contends that the Krasowskis should not be permitted to raise their concerns about the adoption of Rule 25-6.0423, F.A.C., in this proceeding.

The Krasowskis also assert risks associated with nuclear technology. FPL responds that the type of risks to which the Krasowskis refer is not specified, but if those risks are related to safety, that issue is not within the Commission's jurisdiction. To the extent the Krasowskis intend to dispute the use of nuclear generation as a policy matter, FPL argues that the issue falls outside the scope of this proceeding. Furthermore, FPL contends that the use of nuclear generation is encouraged in Florida given the new criteria established in Section 403.519, Florida Statutes, for new nuclear capacity.

Finally, the Krasowskis list Sections 366.80-366.85, and 403.519, Florida Statutes, as a statutory basis for the relief they request. FPL argues that only Section 403.519, Florida Statutes, governs this proceeding and if the Krasowskis intend to raise issues related to Sections 366.80-366.85, those issues fall outside the scope of this proceeding.

Standard for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, 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 days before the evidentiary hearing, must conform with Rule 28-106.201(2), Florida Administrative Code, 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 by the proceeding. Intervenors take the case as they find it.

To have standing, the intervenor must meet the two prong standing test in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d 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 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. 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), rev. den., 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

It appears that the Krasowskis meet the two prong standing test in Agrico, in that they are residential customers taking service from FPL whose interests may be substantially affected by this proceeding. However, the Krasowskis' intervention shall be limited to the issues that are within the Commission's jurisdiction. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of nuclear safety and risks associated with nuclear technology, however, are under the purview of the Nuclear Regulatory Commission. The issues raised by the Krasowskis relating to Rule 25-6.0423, F.A.C., and FEECA are not within the scope of this proceeding. Therefore, the Krasowskis' allegation of substantial injury with respect to these assertions is not of a type or nature which this proceeding is designed to protect.

Conclusion

In conclusion, the Krasowskis meet the two prong standing test in Agrico; therefore, the Krasowskis' Petition shall be granted and Bob and Jan Krasowski shall be allowed to represent their respective interests in this proceeding. However, this decision should not be construed to permit the Krasowskis to raise arguments relating to nuclear safety; the adoption of Rule 25-6.0423, F.A.C., the appropriateness and prudence of the use of nuclear generation, and Sections 366.80-366.85 of FEECA. Pursuant to Rule 25-22.039, F.A.C., the Krasowskis take the case as they find it. As intervenors in this proceeding, the Krasowskis are expected to comply with the same standards, rules, statutes, and procedures as all other parties to this proceeding, and shall be required to stay within the scope of this proceeding as it has been established through the issues, rules, and governing statutes.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Joint Petition to Intervene is granted with respect to Jan and Bob Krasowski as set forth herein.¹ 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 docket, to:

¹ This order grants intervention to Jan and Bob Krasowski, respectively, in their individual capacity.

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 28th day of
December, 2007.



NATHAN A. SKOP
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 25-22.060, 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.