

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO. 100437-EI  
ORDER NO. PSC-11-0303-PCO-EI  
ISSUED: July 14, 2011

ORDER GRANTING SOUTHERN ALLIANCE FOR CLEAN ENERGY'S  
PETITION TO INTERVENE

Background

During the 2010 fuel adjustment proceedings, the Commission directed that a separate docket be established to review the extended outage at Progress Energy Florida, Inc.'s (PEF) Crystal River 3 nuclear plant (CR3).<sup>1</sup> As a result of the Commission's action this docket was opened. On June 15, 2011, the Southern Alliance for Clean Energy (SACE) filed a Petition to Intervene (Petition) in this docket. No party has objected to SACE's petition and the time for doing so has elapsed.

Petition for Intervention

SACE states that it is a non-profit corporation authorized to conduct operations in the State of Florida. SACE asserts that its mission is to promote responsible energy choices that solve global warming problems and ensure clean, safe, and healthy communities throughout the Southeast, including Florida. SACE alleges that it has presented experts and provided testimony in numerous forums in Florida, including before the Legislature, the Department of Environmental Protection and this Commission to promote responsible energy choices. According to SACE, it places a priority on evaluating all opportunities for displacing non-renewable electricity generation, such as coal-fired and nuclear power plants with cost-effective energy efficiency programs and renewable energy generation. SACE states that it has been granted party status in numerous dockets before the Commission, including PEF resource planning and prudence dockets, such as the Commission review of the Numeric Conservation Goals, PEF's Demand-side Management Plan, and the Nuclear Cost Recovery Clause docket.

SACE asserts that the present docket is designed for the Commission to review the facts surrounding the continuing CR3 outage and PEF's past and ongoing actions in response to the outage to determine the reasonableness and prudence of such actions. SACE contends that the determination by the Commission of the reasonableness and prudence of PEF's actions in this docket will affect a myriad of PEF resource planning decisions that include: fuel-type utilization; energy efficiency implementation; renewable energy generation and procurement; and coal plant retirements as PEF strives to meet its demand formerly met by the CR3. SACE concludes that

<sup>1</sup> Order No. PSC-10-0632-PCO-EI, issued October 25, 2010, in Docket No. 100001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

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this determination will affect SACE members' substantial interest in ensuring those resource decisions are made in a responsible manner consistent with the organization's mission.

SACE also states that the Commission will review the prudence of PEF's resulting fuel and purchase power costs associated with the extended CR3 outage. SACE states that the costs that may flow from such a review by the Commission will affect SACE members' substantial interests by significantly affecting their cost of service. SACE claims that its members view the risk of these increases with serious concern. SACE asserts that its members wish to examine the basis of the fuel and purchase power charges resulting from the extended outages. SACE concludes that, as customers of PEF, SACE members' substantial interest will be affected in this docket. No party filed an objection to SACE's petition

### 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 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).

Further, the test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Analysis & Ruling

SACE has pled that its purpose is to promote responsible energy choices that solve global warming problems and ensure clean, safe, and healthy communities. SACE states that the determination by the Commission of the reasonableness and prudence of PEF's actions in this docket will affect PEF resource planning decisions. SACE asserts that this determination will affect SACE members' substantial interests by affecting PEF's current and future resource decisions. Furthermore, SACE argues that the Commission's review of the prudence of the fuel and purchased power costs affect its member's substantial interests and that its members view the risk of these increases with concern and wish to examine the basis of these charges. Accordingly, SACE has demonstrated in its pleadings that the subject matter of this docket is within the general scope of the association's interest and activity and that the relief requested is of a type appropriate for the association to receive on behalf of its members. SACE has pled sufficient facts to meet the second and third prongs of the associational standing test established in Florida Homebuilders.

SACE states it has a substantial membership base in PEF's service territory and that its members are customers of PEF. SACE references other Commission dockets involving PEF in which SACE has been granted intervention. Accordingly, SACE has alleged sufficient grounds to meet the first prong of the associational standing test.

SACE asserts that it also meets the Agrico standing test. SACE states that the purpose of the current docket is to evaluate PEF's actions and costs related to the CR3 extended outage to determine if those actions are appropriate. SACE alleges its member's interests are to ensure that the decisions that flow from the Commission's proceeding ensure responsible energy choices and ensure that fuel and purchase power costs paid by SACE members are just and reasonable. Therefore, SACE has stated that its member's interests may be affected by the Commission's decision in this docket and that the injury is of sufficient immediacy to warrant intervention. Accordingly, SACE meets both prongs of the Agrico test to establish standing.

Because SACE meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, SACE's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., SACE takes the case as it finds it.

Based on the foregoing, it is

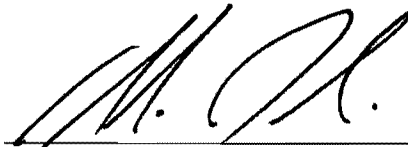
ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that the Petition to Intervene filed by the Southern Alliance for Clean Energy is hereby granted as set forth in the body of this Order. It is further

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:

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By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 14th day  
of July, 2011.



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LCB

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.