

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for
Okeechobee Clean Energy Center Unit 1, by
Florida Power & Light Company.

DOCKET NO. 150196-EI
ORDER NO. PSC-15-0424-PCO-EI
ISSUED: October 8, 2015

ORDER GRANTING INTERVENTION TO
SOUTHERN ALLIANCE FOR CLEAN ENERGY

By petition, dated September 23, 2015, Southern Alliance for Clean Energy (SACE) has requested permission to intervene in this proceeding. SACE states that it has staff in Florida working to advance energy plans and policies that best serve the environmental, public health, and economic interests of communities in Florida. In addition, there are hundreds of SACE members residing in Florida who are dedicated to promoting responsible energy choices that achieve clean, safe, and healthy communities. A substantial number of SACE's Florida members reside in the service territory of Florida Power & Light Company (FPL).

SACE and its members advocate for low cost, low risk resources to meet electricity demand, which includes increased energy efficiency implementation and meaningful solar development. SACE states its advocacy ensures that, pursuant to SACE's bylaws, resource decisions will be realized that best serve the environmental, public health, and economical interests of SACE members. In its petition, SACE asserts the Commission will issue an order concerning FPL's petition requesting a need determination for the 1,622 MW natural gas combined cycle plant in Okeechobee County, with a projected cost of approximately \$1.2 billion, to meet FPL's projected customer electricity demand. According to SACE, its members who are FPL customers will bear the cost of the Commission's decision in this docket. Further, SACE contends the Commission's decision will necessarily affect resource decisions now and in the future for SACE members in FPL's service territory. SACE wishes to ensure that those resources are consistent with its mission. Therefore, SACE argues the Commission's order in this proceeding will necessarily affect the substantial interests of SACE and its members. Further, SACE contends its interests are the type this proceeding is designed to protect because the purpose of this docket coincides with the substantial interests of SACE and its members.

Standard for Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, (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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 25-106.201, (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...

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 (Fla. 2nd DCA 1981). The intervenor must show (1) he or she will suffer injury in fact which is of sufficient immediacy to entitle the intervenor to a Section 120.527, F.S., hearing, and (2) the 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).

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 and Ruling

It appears that SACE’s members meet the two-prong standing test in Agrico as well as the three-prong associational standing test in Florida Home Builders. SACE states that hundreds of its members reside in Florida, many of whom are FPL customers. SACE asserts that these members’ substantial interests will be affected by the Commission’s decision in this docket. Further, SACE contends that these interests are the type this proceeding is designed to protect; therefore, SACE meets the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, SACE asserts that many of its members are FPL customers who will bear the cost stemming from the Commission’s decision in this docket. Therefore, it appears a substantial number of the SACE’s members will be directly affected by this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within SACE’s general scope of interest and activity. SACE represents its members and their environmental and conservation concerns, including advocating for low cost, low risk, resources to meet electricity demand, which includes increased energy efficiency implementation and meaningful solar development. Finally, as for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent its members’ interests and ensure resource decisions that best protect its members’ environmental, public health, and economical interests. SACE asserts that

the rights and interests of SACE and its members cannot be adequately represented by any other party in this docket. Therefore, the relief requested appears to be the type that is appropriate for SACE to request from the Commission on behalf of its of its members.

Having reviewed the Petition, it appears that SACE's and its members' substantial interests may be affected by this proceeding. No response was filed in opposition to this request. Therefore, the Petition shall be granted. Pursuant to Rule 25-22.039, F.A.C., SACE takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by Southern Alliance for Clean Energy is hereby granted. 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 Ronald A. Brisé, as Prehearing Officer, this 8th day of October, 2015.



RONALD A. BRISE
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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.