

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 170007-EI  
ORDER NO. PSC-17-0112-PCO-EI  
ISSUED: March 27, 2017

ORDER GRANTING INTERVENTION TO  
SOUTHERN ALLIANCE FOR CLEAN ENERGY

Petition for Intervention

On February 13, 2017, pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), and Rules 25-22.039 and 28-106.205, Florida Administrative Code (F.A.C.), the Southern Alliance for Clean Energy (SACE) filed a Petition to Intervene in this docket (Petition). No party has filed an objection to SACE's Petition, and the time for doing so has expired.

SACE asserts that it is a non-profit clean energy corporation that advocates for energy plans, policies, and systems that best serve the environmental, public health, and economic interest of communities in the Southeast, including Florida. SACE asserts that a substantial number of its members reside in the service territories served by the four largest investor-owned utilities, and SACE has been granted intervention in a number of Florida Public Service Commission (Commission) proceedings including Docket No. 140007-EI, Environmental Cost Recovery Clause. SACE argues that its members will bear the costs of environmental cost recovery clause rates determined in this docket and that, consistent with its mission "to advocate for energy plans, policies and systems that best serve the environment, public health and economic interest, including recovery of costs of such plans, policies and systems, of communities in the Southeast," SACE wishes to ensure that environmental compliance activity is carried out in the most prudent, reasonable, and cost-effective means possible. SACE asserts that the Commission's actions in this docket are "inexorably intertwined with the substantial interests of SACE and its members." SACE contends: (1) that it is authorized by its bylaws to represent its interests and the interests of its members in legal actions; (2) that the subject of this docket is within the scope of the activities and interests of SACE; (3) that the relief requested is within the type of relief appropriate for SACE to receive on behalf of its members; (4) that the rights and interests of SACE and its members cannot be adequately protected by any other party to this docket; and (5) that intervention will not unduly delay or prejudice the rights of other parties.

Standards for Intervention

Rule 25-22.039, F.A.C., provides:

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 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 in an administrative proceeding, an 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 that (1) he will suffer injury in fact, which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing; and (2) the substantial injury is of a type or nature which the proceeding is designed to protect. The first prong of the test addresses the degree of injury. The second addresses 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); 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 & Ruling

It appears that the SACE meets the two-prong standing test in Agrico, as well as the three-prong associational standing test established in Florida Home Builders. The purpose of this proceeding is to determine the environmental cost recovery clause factors. The substantial interests of SACE’s members are affected by this proceeding, since its members will bear the costs of environmental cost recovery clause factors determined in this docket. Therefore, SACE’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, to have standing in an administrative proceeding, an association must demonstrate that a substantial number of its members are substantially affected by the proceeding. Florida Home Builders, 412 So. 2d at 353. Under Florida law, neither a specific number, nor percentage of association members, is required for standing. Hillsborough County v. Florida Restaurant Ass’n, Inc., 603 So. 2d 587, 589 (Fla. 2nd DCA 1992)(court found standing where 37 of 2,766 members were affected, because a

substantial number of the members residing in the county at issue were affected). Here SACE asserts that a substantial number of its members reside in the service territories of the four largest investor-owned utilities and will bear the costs of environmental cost recovery determined in this docket. SACE has previously intervened in Docket No. 140007, Environment Cost Recovery Clause, and the Commission has recognized SACE's standing in other proceedings that affected SACE's members. Upon review, I find that SACE meets the first prong of the associational standing test.

With respect to the second prong, the subject matter of the proceeding appears to be within the SACE's general scope of interest and activity. SACE asserts that its mission, as reflected in its bylaws, is to advocate for energy plans, policies and systems that best serve the environmental, public health and economic interest, including recovery of costs of such plans, policies and systems, of communities in the Southeast. SACE contends that, consistent with its mission, SACE wishes to ensure that environmental compliance activity is carried out in the most prudent, reasonable, and cost-effective means possible. SACE asserts that it intends to examine incurred and projected compliance costs; and thus, the Commission's actions in this docket are "inexorably intertwined with the substantial interests of SACE and its members." Upon review, I find that SACE meets the second prong of the associational standing test.

As for the third prong, SACE seeks intervention to represent the interests of its members before the Commission. A trade or professional association has standing to participate in an administrative proceeding, even though it is acting solely as the representative of its members. Florida Home Builders, 412 So. 2d at 353. As stated above, SACE's members will be substantially affected by this Commission's decision and the Commission has recognized SACE's standing in other proceedings that affected SACE's members. Finally, the Commission has granted intervention to SACE in a previous Environmental Cost Recovery Clause docket, Docket No. 140007-EI. Upon review, I find the relief requested by SACE is of a type appropriate for an association to obtain on behalf of its members.

Finding that 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. Notwithstanding the granting of intervention, however, I remind the parties that issues shall be limited to those appropriate to the scope of an environmental cost recovery proceeding. While issue development is an ongoing process, all issues and testimony should be germane to this environmental cost recovery proceeding. Disagreement as to the inclusion, scope or wording of particular issues will ultimately be resolved at the Prehearing Conference.

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 Ronald A. Brisé, as Prehearing Officer, that the Petition to Intervene filed by Southern Alliance for Clean Energy is hereby granted as set forth in the body of this Order. It is further

ORDERED that the issues and testimony shall be limited to those appropriate in scope and germane to the Environmental Cost Recovery Clause. 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:

George Cavros, Esq.  
Southern Alliance for Clean Energy  
120 E. Oakland Park Blvd, Suite 105  
Fort Lauderdale, FL 33334  
(954) 295-5714 (Telephone)  
(866) 924-2824 (Fax)

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 27th day  
of March, 2017.



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RONALD A. BRISÉ  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
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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.