

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

DOCKET NO. 20230001-EI  
ORDER NO. PSC-2023-0106-PCO-EI  
ISSUED: March 21, 2023

ORDER GRANTING INTERVENTION TO  
SOUTHERN ALLIANCE FOR CLEAN ENERGY

As part of the Florida Public Service Commission's continuing fuel and purchased power cost recovery clause and generating performance incentive factor proceedings, a hearing has been set in this docket for November 1-3, 2023.

Petition for Intervention

On January 12, 2023, the Southern Alliance For Clean Energy (SACE) filed its Petition to Intervene (Petition). SACE is a non-profit clean energy corporation organized under the laws of Tennessee and authorized to conduct operations in the State of Florida. The purpose of SACE is to advocate for energy plans, policies, systems, and cost recovery that best serve the environmental, public health, and economic interests of communities in the Southeast, including Florida. SACE represents that it has staff working in Florida to advance energy choices consistent with its purpose that will serve the economic, environmental, and public health interests of all Floridians, including SACE members. SACE further represents that at least 430 of its members, who are ratepayers and dedicated to advancing SACE's purpose and mission, reside in Florida Power & Light Company's (FPL), Duke Energy Florida, LLC's (DEF), and Tampa Electric Company's (TECO) service territories, and that these members constitute a substantial number of SACE's membership. SACE further asserts that it has petitioned to intervene and been granted party status in numerous dockets before the Commission, most recently Docket No. 20220051-EI, *In re: Review of Storm Protection Plan, pursuant to Rule 25-6.030, Florida Administrative Code (F.A.C), Florida Power and Light Company.*

SACE asserts that the Commission's actions will affect the rates that SACE members who are customers of FPL, DEF, and TECO will pay in 2023 and 2024. SACE submits it is uniquely positioned to represent the interests of its members with the full rights of a party, to scrutinize the utilities' requests in this docket to ensure that economic and policy outcomes best serve the interests of its members.

Pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), SACE has conferred with counsel for FPL, DEF, and TECO. SACE has also conferred with the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate), who are all parties in this proceeding. SACE represents that OPC, FRF, PCS Phosphate and FIPUG have no objection to SACE's intervention in this docket. DEF, TECO, and FPL take no position.

### Standards for Intervention

Pursuant to Rule 28-106.205, 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 move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), 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 three-prong standing test set forth in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).<sup>1</sup> 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. *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.

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<sup>1</sup> Under *Agrico*, 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 aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. 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 and Ruling

Based on its representations, SACE has met the associational standing requirements of *Florida Home Builders* as stated above. As to the first prong, SACE asserts that a substantial number of its Florida members reside in FPL's, DEF's, and TECO's service territories, and that the substantial interests of those members will be affected by the Commission's actions in this proceeding. As to the second prong, SACE, consistent with its bylaws, has represented its members' economic interests before the Commission on energy plans and policies, and plans to continue to do so in this docket. Therefore, the Commission's consideration of the proposed FPL, DEF, and TECO fuel cost recovery factors in this docket are well within the general scope of SACE's stated purpose in its bylaws. As to the third prong, the type of relief requested, intervention in this case with the full rights of a party, is appropriate as it will provide SACE an opportunity to closely examine the reasonableness and prudence of fuel and purchased power costs, generation performance incentive factors, the ultimate fuel factors, and any other requested cost recovery, and advocate on behalf of its members. For these reasons, SACE's petition to intervene is granted. As an intervenor, SACE takes the case as it finds it.

Based on the above representations, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the Motion 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 Southern Alliance for Clean Energy takes the case as it finds it. 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  
Southern Alliance for Clean Energy  
120 E. Oakland Park Blvd., Suite 105  
Fort Lauderdale, FL. 33334  
(954) 295-5714  
[george@cavros-law.com](mailto:george@cavros-law.com)

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 21st day of March, 2023.



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Mike La Rosa  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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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.

RPS

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.