

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf)
Power Company)
_____)

Docket No. 160186-EI

**MOTION FOR LEAVE TO REPLY TO
RESPONSE OF GULF POWER COMPANY IN OPPOSITION TO
PETITION TO INTERVENE BY SOUTHERN ALLIANCE FOR CLEAN ENERGY**

The Southern Alliance for Clean Energy (“SACE”), through its undersigned counsel, respectfully submits this motion for leave to reply pursuant to Rule 28-106.204, Florida Administrative Code, to Gulf Power Company’s (“Gulf”) Opposition to Petition to Intervene by Southern Alliance for Clean Energy (“Opposition to Intervention”), and in support thereof states:

Good Cause Exists to Allow SACE to File A Reply to Correct Gulf’s Misrepresentations

Good cause exists to allow SACE to file a reply to correct and clarify the misrepresentations contained in Gulf’s Opposition to Intervention. Gulf alleges, without substantiation, that SACE is attempting to “convert this base rate proceeding into yet another proceeding for re-litigating issues it has already raised and lost.” Opposition to Intervention at 3. As stated in SACE’s proposed reply to Gulf’s Opposition to Intervention, attached to this motion, SACE simply seeks to litigate the issues presented by Gulf in this proceeding, and already identified by staff as issues likely to be litigated. In this base rate proceeding, Gulf seeks to increase its base rates and restructure its residential rates. Gulf does not seem to dispute that SACE’s members are ratepayers of Gulf who will be impacted by this proceeding. Simply put, it will be the Commission’s job to determine whether the proposed changes to Gulf’s rates are fair, just, and reasonable. This includes whether such changes are fair, just, and reasonable to SACE’s members who are ratepayers of Gulf. Simply because SACE’s members might have an interest in a rate structure that is fair, just, and reasonable to low-energy users does not disqualify

them from intervening in a rate proceeding more than it would disqualify any proposed intervenor that does not represent *every* ratepayer.

Allowing SACE to file the proposed reply (attached) will help clarify SACE's intentions to the Florida Public Service Commission, will help correct the many misrepresentations contained in Gulf's Opposition to Intervention, and will help correct the erroneous legal assertions made by Gulf in its Opposition to Intervention. SACE has conferred with the other parties and the undersigned is authorized to represent that the Office of Public Counsel and Gulf Power Company take no position on this motion for leave to file a reply.

RESPECTFULLY SUBMITTED this 30th day of November, 2016.

/s/ Bradley Marshall
Florida Bar No. 0098008
bmarshall@earthjustice.org
Alisa Coe
Florida Bar No. 0010187
acoe@earthjustice.org
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
(850) 681-0031
(850) 681-0020 (facsimile)

***Counsel for Petitioner
Southern Alliance for Clean Energy***

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy and correct copy of the foregoing was served on this 30th day of November, 2016, via electronic mail on:

Biana Lherisson Kelley Corbari Stephanie Cuello Theresa Tan Florida Public Service Commission Office of the General Counsel 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850 blheriss@psc.state.fl.us kcorbari@psc.state.fl.us scuello@psc.state.fl.us ltan@psc.state.fl.us	Jeffrey A. Stone Russell A. Badders Steven R. Griffin Beggs & Lane 501 Commendencia St. Pensacola, FL 32576-2950 jas@beggslane.com rab@beggslane.com srg@beggslane.com
Richard D. Melson 705 Piedmont Dr. Tallahassee, FL 32312 rick@melsonlaw.com	Charles A. Guyton Gunster, Yoakley & Stewart, P.A. 215 S. Monroe St., Suite 618 Tallahassee, FL 32301 cguyton@gunster.com
Robert L. McGee, Jr. Gulf Power Company One Energy Place Pensacola, FL 32520-0780 rlmcgee@southernco.com	J.R. Kelly Stephanie A. Morse Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us morse.stephanie@leg.state.fl.us

DATED this 30th day of November, 2016.

/s/ Bradley Marshall
Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf)
Power Company)
_____)

Docket No. 160186-EI

**REPLY TO RESPONSE OF GULF POWER COMPANY IN OPPOSITION TO
PETITION TO INTERVENE BY SOUTHERN ALLIANCE FOR CLEAN ENERGY**

The Southern Alliance for Clean Energy (“SACE”), through its undersigned counsel, respectfully submits this reply to Gulf Power Company’s (“Gulf”) Opposition to Petition to Intervene by Southern Alliance for Clean Energy (“Opposition to Intervention”), and in support thereof states:

**I. SACE’s Members’ Substantial Interests Are The Type Of Interests
Designed To Be Protected By This Proceeding**

Gulf, in its Opposition to Intervention, misconstrues the SACE petition for intervention and misapplies the law to incorrectly characterize SACE’s interest in this proceeding. The resolution of issues in this proceeding is well within SACE’s mission, and the interest of its members. Gulf attempts to re-write the purpose of this base rate proceeding to claim that the sole issue before the Florida Public Service Commission (“Commission”) “is whether the restructured rates better recover the cost of providing service [by Gulf] to customers.” Gulf Opposition to Intervention at 8. Of course, that is not what the statute says and Gulf is attempting to re-write Florida law to limit the issues in this proceeding to whether the proposed rates “better recover the cost of providing service” by Gulf Power.

Florida law requires that, “[i]n fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance

of rate structures.” § 366.06(1), Fla. Stat. The term “fair, just, and reasonable rates” appears nowhere in Gulf’s response in opposition, as if the key terms for the Commission to consider in this proceeding did not exist. Instead, Gulf states that the “Commission is establishing just and reasonable rates all customers should pay” (Gulf Opposition to Intervention at 2-3), as if all customers were a monolith, with specific ratepayers unable to challenge whether the rates are fair, just, and reasonable as to them. The term “fair” appears just once in Gulf’s Opposition to Intervention, and not in reference to any consumer. Instead, Gulf states that the purpose of the proceeding is to ensure the Commission “provide[s] a *fair rate of return* on the property that has been used by the Company [Gulf] to provide electric service.” Gulf Opposition to Intervention at 3 (emphasis added).

Under Florida law, however, the Commission is also charged with ensuring that rates are fair (and just and reasonable) as to customers and ratepayers, including SACE’s members, not just to Gulf. If Gulf’s rate restructure would cause SACE’s members to have a disproportionate bill increase *because* they have invested in energy-efficiency measures and energy conservation (Petition to Intervene by Southern Alliance for Clean Energy (“Petition”) at 4), an investment explicitly encouraged by state policy (§ 366.81, Fla. Stat.), then surely those members have the right to question whether Gulf’s proposed rates are fair, just, and reasonable to Gulf’s ratepayers, including SACE’s members.

Gulf, seeming to recognize that SACE’s members do actually have a substantial interest in their rates and rate structure, states that “SACE’s members have no right to preserve their existing rate structure.” Gulf Opposition to Intervention at 9. While it is true that no one has absolute rights to an existing rate structure, it is as meaningless a statement to determining standing as if SACE had stated (which it did not) that Gulf has no *right* to change their existing

rate structure. Rather, it is for the Commission to approve or disapprove of Gulf's request, and SACE's members seek intervention to ensure that their substantial interests in ensuring that rates do not penalize them for their energy efficiency investments in a rate restructure are heard by the Commission.

As SACE alleged in its petition, SACE's members have made investments in energy efficiency and conservation measures (Petition at 2), which have consequently lowered their energy use. As admitted by Gulf in its response, the proposed rate restructure "may not reduce the bill [of SACE's members] as much as it would have under the existing rate structure." Gulf Opposition to Intervention at 9. Certainly, it is appropriate, as SACE is asking, to consider whether Gulf's proposed rates are fair, just, and reasonable to SACE's members as ratepayers who use less energy because of energy efficiency and conservation.

Whether a proposed rate increase is fair to members of associations has been found by the Commission to be exactly the type of interests meant to be protected by this type of proceeding. The Sierra Club, in its petition to intervene in the recent Florida Power & Light ("FPL") base rate proceeding, had the goal "to transition electric utilities away from burning fossil fuels and toward low cost, low risk clean energy alternatives." Order No. PSC-16-0299-PCO-EI at 1. Having similar interests to SACE, Sierra Club was granted intervention based on the Commission's finding that its "members' substantial interests [were] affected since increases in the cost of electricity directly affect their monthly electric bills." *Id.* at 2. The same interests are asserted by SACE in this proceeding, and Gulf fails to address this Commission order in its response.

Moreover, Gulf's argument that SACE's members, to the extent they are affected by the proposed base rate increase, are represented by the Office of Public Counsel (Gulf Opposition to

Intervention at 11) lacks merit. The same argument was made by FPL against the intervention of individual ratepayers in its rate case proceeding, and was squarely rejected by the Commission. Order No. PSC-16-0323-PCO-EI.

Gulf's argument, taken to its logical conclusion, would mean no ratepayers should be allowed to intervene if the Office of Public Counsel has decided to do so. That, however, is contrary to the position of this Commission. The Commission has repeatedly held that associations representing their members in rate base proceedings, working to ensure that the new rates their members are being asked to pay are fair, reasonable, and just, should be granted intervention. *See, e.g.*, Order No. PSC-16-0180-PCO-EI (granting intervention to AARP in FPL rate base proceeding); Order No. PSC-16-0181-PCO-EI (granting intervention to Florida Retail Federation in FPL rate base proceeding); Order No. PSC-16-0157-PCO-EI (granting intervention to Federal Executive Agencies in FPL rate base proceeding); Order No. PSC-16-0158-PCO-EI (granting intervention to South Florida Hospital and Healthcare Association in FPL rate base proceeding); Order No. PSC-16-0132-CO-EI (granting intervention to Florida Industrial Power Users Group in FPL rate base proceeding). Similarly, SACE, through its bylaws, represents its members' economic interests in this proceeding (*see* Petition at 4), which will necessarily be substantially affected by Gulf's proposed plan to increase and restructure rates. It is telling that Gulf is unable to cite a single Commission decision where an association made up of ratepayers was denied intervention in a rate base proceeding such as this.

II. SACE Has A Substantial Number of Members Substantially Affected By This Proceeding

SACE has specifically alleged that it has a substantial number of members in Gulf's territory. Petition at 3. It has therefore met its burden at this stage of the proceeding under Florida Administrative Code Rule 25-22.039, which only requires sufficient "allegations . . . to

demonstrate that the intervenor is entitled to participate in the proceeding.” Moreover, the Commission previously granted intervention to SACE against Gulf Power Company in the FEECA proceedings, Docket Number 130202-EI, specifically finding that SACE satisfied the associational standing test. This includes a finding that SACE had a substantial number of members that may be substantially affected by the Commission’s decision in a docket. Order No. PSC-14-0135-PCO-EI at 2-3. The Commission’s decision also necessarily included the finding that SACE had a substantial number of members in Gulf’s territory. Since that time, SACE’s membership in Gulf’s territory has only grown.

One of the purposes of associational standing is to save individual members of an association from each having to litigate an issue on their own behalf, and to streamline proceedings by allowing an association to represent its members’ interests. *See Fla. Home Builders Ass’n v. Dept. of Labor & Emp’t Sec.*, 412 So.2d 351, 353 (Fla. 1982) (finding that associational standing eliminates the burden placed on individual parties of “the cost of instituting and maintaining” litigation and the burden on the administrative body from hearing “multiple challenges based upon identical or similar allegations”). Denying SACE intervention would not extinguish SACE’s members’ interests in whether they will receive a fair, just, and reasonable rate as a result of this proceeding, and could lead to more individuals seeking to intervene than would otherwise.

III. SACE Is Not Seeking To Change The Issues Presented In This Proceeding, Nor Seeking To Collaterally Attack Prior Commission Orders

As a proposed intervenor, SACE does not seek to, nor can it change the nature of this proceeding, and, in fact, must take the case as it finds it. Fla. Admin. Code R. 25-22.039. Gulf asserts, without basis, that SACE is attempting to convert the proceeding into a DSM

proceeding, and to collaterally attack previous Commission decisions on energy efficiency. Gulf Opposition to Intervention at 11-13.

To the contrary, SACE alleges that Gulf's "requested rate increase and rate restructure are unjust, unreasonable, and unjustly discriminatory," issues that are clearly present in this case and in no way collaterally attack prior Commission decisions. Petition at 7. Gulf claims that certain issues of fact raised by SACE are inappropriate for consideration in this proceeding. Even if this were true, Gulf does not — and cannot — dispute that certain issues of fact are appropriate, such as whether Gulf's proposed residential rate restructure is fair, just, and reasonable. Petition at 6.

The first disputed issue of fact Gulf takes issue with is the one in paragraph 28 of SACE's petition, asking whether the proposed changes to Gulf's goals under FEECA are appropriate. Gulf asserts that this is not at all at issue in this proceeding. Gulf Opposition to Intervention at 11. Yet, Gulf Power actually has an entire witness, John N. Floyd, whose testimony is dedicated to discussing this very issue. In the summary of his testimony, he states that "Gulf is proposing expansion of the Company's DSM Plan as a result of improved cost effectiveness resulting from the proposed structural change to the Company's residential rates." Prefiled Testimony of John N. Floyd at 13. Either Gulf believes that witness Floyd should be immune from cross examination regarding his testimony, or Gulf filed his testimony in the wrong docket. In either case, whether the proposals contained in witness Floyd's testimony are appropriate has been put at issue in this docket by Gulf, *not* SACE.

Next, Gulf takes issue with SACE's disputed facts regarding whether the proposed rate structure will discourage energy efficiency and demand-side renewable generation. Gulf Opposition to Intervention at 12. Yet at the same time, Gulf admits that the "Commission may

consider the impact of rates on energy conservation” (Gulf Opposition to Intervention at 12), which is precisely what SACE is requesting. In light of the policy of the state “that it is critical to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens,” Fla. Stat. § 366.81, SACE asserts that part of the consideration of whether a rate and rate structure are fair, just, and reasonable must include the impact of such changes on energy conservation and demand-side renewable energy.

Next, Gulf takes issue with SACE’s disputed facts regarding whether customers who invest in energy efficiency and demand-side renewable generation, thus lowering their energy use, are subsidized by other customers. Gulf Opposition to Intervention at 12. Yet these questions get to the heart of Gulf’s own justifications for the proposed rate restructure – namely, are those who are using less energy truly “paying less than they should” under current rates. Prefiled Testimony of Robert L. McGee, Jr., at 7. SACE disputes this testimony, and asserts that Gulf’s proposed rate restructure unfairly burdens those who have invested in energy efficiency and demand-side renewable energy. SACE further disputes the testimony that the current structure “results in some customers paying more than they should,” *id.*, *i.e.*, subsidizing those customers who use less energy. Again, it is not SACE that has introduced these issues, but Gulf. That SACE disputes Gulf’s testimony does not make SACE’s issues irrelevant, but makes them disputed facts.

The same is true for SACE’s issue of disputed fact regarding whether energy efficiency and demand-side renewable generation decrease fixed costs. Again, Gulf injected this issue in this case by asserting through its testimony that low energy users are not paying their fair share of fixed costs. Prefiled Testimony of Robert L. McGee, Jr., at 7. SACE disputes this testimony.

Just because SACE disputes Gulf's testimony does not mean such a dispute "serves no legitimate purpose in a base rate proceeding." Gulf Opposition to Intervention at 12. The fact that Gulf has offered testimony in this proceeding on this issue, and that SACE disputes that testimony, demonstrates that SACE seeks to be heard on precisely the topics already at issue in the proceeding.

In fact, essentially all of SACE's disputed issues of fact are components of staff's proposed issue 72: "Should Gulf's proposed new methodology to design the residential base and energy charges that results in an increase from \$0.62 to \$1.58 per day, or approximately \$48 per month, in the base charge (and corresponding reduction in the energy charge) be approved?" Furthermore, the issues that SACE will be allowed to address will be determined by the Prehearing Officer. SACE will not be allowed to present evidence regarding issues deemed to be irrelevant to this proceeding by the Prehearing Officer. Order No. PSC-16-0473-PCO-EI at 7.

As shown above, Gulf apparently believes it is inappropriate for the Commission to hear from intervenors who dispute testimony it offers or cross-examine its witnesses. If such were true, there would be no need for a hearing before the Commission, as there would be no need for the Commission to adjudicate these disputes or make findings or decisions. Gulf may wish that it could increase rates and change its rate structure without having to prove to the Commission that such changes are fair, just, and reasonable. But Gulf cannot do so under Florida law.

IV. SACE Has Met The Standard For Intervention In This Proceeding

Gulf insists upon proof of SACE's standing allegations in its petition. Gulf Opposition to Intervention at 14. Never has such proof been required by the Commission in considering an intervention petition. In fact, the Commission rule governing the subject simply requires that an intervention petition "include *allegations* sufficient to demonstrate that the intervenor is entitled

to participate in the proceeding.” Fla. Admin. Code R. 25-22.039 (emphasis added). SACE has met this standard. To require such proof before intervention is granted would require an evidentiary hearing for every intervention petition, requiring significant additional resources from the Commission and litigants before the Commission. SACE is, of course, prepared to prove its standing allegations if the Commission wishes to allot additional time for SACE to present standing witnesses at the final hearing in March. Should the Commission depart from its longstanding practice, SACE is also prepared to offer evidence at an evidentiary hearing regarding its standing prior to the final hearing.

Respectfully submitted this 30th day of November, 2016.

/s/ Bradley Marshall
Florida Bar No. 0098008
bmarshall@earthjustice.org
Alisa Coe
Florida Bar No. 0010187
acoe@earthjustice.org
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301
(850) 681-0031
(850) 681-0020 (facsimile)

*Counsel for Petitioner Southern Alliance
for Clean Energy*