

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-09-0027-PCO-EG ISSUED: January 9, 2009

ORDER GRANTING INTERVENTION

Section 366.82, Florida Statutes (F.S.), part of the Florida Energy Efficiency and Conservation Act (FEECA), requires the Commission to adopt goals to increase the efficiency of energy consumption, increase the development of demand-side renewable energy systems, reduce and control the growth rates of electric consumption and weather-sensitive peak demand, and encourage development of demand-side renewable energy resources. Pursuant to Section 366.82(6), F.S., the Commission must review a utility's conservation goals not less than every five years. These statutes are implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code (F.A.C.). By Order No. PSC-08-0816-PCO-EG, issued December 18, 2008, the matter has been scheduled for a formal administrative hearing on August 24-28, 2009, and Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG were combined (the utilities which filed these seven dockets are hereinafter "FEECA Utilities").

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

NRDC and SACE's Joint Petition for Intervention

On October 24, 2008, the Natural Resources Defense Council (NRDC) and the Southern Alliance for Clean Energy (SACE) filed a Joint Petition to Intervene (Petition) in this docket. NRDC is a national non-profit organization that is committed to the protection of the environment, human health, and natural resources. Over 25,000 of NRDC's more than 1.2 million national members reside in Florida. SACE, is a non-profit organization that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including in the State of Florida. According to SACE, it has 1,781 members in Florida. A substantial number of NRDC and SACE members are customers of the FEECA Utilities. In addition, both NRDC and SACE are involved in issues relating to energy policy, including the appropriateness of new demand-side renewable energy systems and evaluating all cost-effective energy efficiency means as a means of mitigating or displacing the need for new, non-renewable electrical generation.

In its petition, NRDC and SACE contend that it is entitled to intervene in this matter based on the following assertions: (1) NRDC has more than 25,000 members and SACE has 1,781 members who are Florida residents, many of whom are customers of the FEECA Utilities; (2) their members' substantial interests will be directly affected by the Commission's decision because they will bear the costs of programs presented by the FEECA Utilities; (3) their members' substantial interests will be directly affected by the Commission's decision because they will rely upon this proceeding to ensure that the most cost-effective measures and programs are made available by the FEECA Utilities to maximize savings from energy efficiency, conservation, and demand-side resources, as alternatives to fossil fuel-generated electric energy; and (4) this type of proceeding is designed to protect the interests of NRDC and SACE members. No party filed a written response to NRDC and SACE's Petition.

Standards 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 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

It appears that NRDC and SACE satisfied the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. With respect to Agrico, it appears that NRDC and SACE's members may suffer injury in fact of sufficient immediacy which entitles the members to participate in this proceeding, and this type of proceeding is designed to protect those members' interests.

With respect to the first prong of the Florida Home Builders associational standing test, NRDC and SACE assert that their Florida members, a significant number of whom are customers of the FEECA Utilities, will be directly affected by the Commission's decision because they will ultimately bear the costs of programs presented by the FEECA Utilities and approved by the Commission. With respect to the second prong, the subject matter of the proceeding is within NRDC and SACE's general scope of interest and activity. With respect to the third prong, NRDC and SACE are seeking intervention in this docket in order to represent the interests of its members. Therefore, based on the foregoing analysis, NRDC and SACE have standing to intervene in this docket.

Because NRDC and SACE satisfy the two prong standing test in Agrico, as well as the three prong associational standing test established in Florida Home Builders, NRDC and SACE's joint petition for intervention shall be granted as set forth herein. Issue development is an ongoing process; while issues should be germane to this proceeding, disagreement as to the particular wording or inclusion of issues will ultimately be resolved at the Prehearing Conference. Pursuant to Rule 25-22.039, F.A.C., the petitioners takes the case as it finds it.

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Based on the foregoing, it is

ORDERED by Chairman Matthew M. Carter II, as Prehearing Officer, that the Joint Petition to Intervene is granted with respect to the Natural Resources Defense Council and the Southern Alliance for Clean Energy as set forth herein. 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:

E. Leon Jacobs, Jr.
Williams & Jacobs, LLC
1720 S. Gadsden St. MS 14, Suite 201
Tallahassee, Florida 32301
(850) 222-1246
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Ljacobs50@comcast.net

By ORDER of Chairman Matthew M. Carter II, as Prehearing Officer, this 9th day of January, 2009.


MATTHEW M. CARTER II
Chairman and Prehearing Officer

(S E A L)

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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.

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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.