

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 110002-EG
ORDER NO. PSC-11-0450-PCO-EG
ISSUED: October 7, 2011

ORDER GRANTING INTERVENTION

Pursuant to Rule 25-17.015(1), Florida Administrative Code, the Commission has a continuing Energy Conservation Cost Recovery (ECCR) – Electric Utilities docket. Pursuant to Order No. PSC-11-0136-PCO-EG, issued February 28, 2011, this matter has been scheduled for a formal administrative hearing on November 1-3, 2011.

Petition for Intervention

By petition dated September 6, 2011, Florida Solar Energy Industry Association (FlaSEIA) filed a Petition to Intervene (Petition) in this docket. According to its petition FlaSEIA is a not-for-profit corporation consisting of 120 companies involved in Florida's solar energy industry. FlaSEIA states that individual members of FLASEIA reside throughout Florida and are both commercial and residential ratepayers of Gulf.

FlaSEIA states that in this docket the Commission will establish conservation cost recovery factors by which the cost of solar pilot programs established for Florida's five investor-owned utilities are recovered in Order No. PSC-09-0855-FOF-EG, issued on December 30, 2009, in Dockets No. 080407-EG – 080413-EG.¹ FlaSEIA asserts that the electric rates of FlaSEIA's individual members and companies will be directly affected by the demand-side energy programs approved in this docket. FlaSEIA further states that its members are engaged in solar renewable energy manufacturing and businesses in Florida. FlaSEIA, as a member of the Florida Solar Coalition, was also an intervenor in Docket Nos. 100154-EG, 100155-EG, 100158-EG and 100160-EG,² where the Commission approved the demand side management programs and established solar pilot programs to implement the investor-owned utilities' current conservation goals. Thus, FlaSEIA contends that the substantial interests of its members will be directly affected by the Commission's decisions in this docket. No party has filed an objection to FlaSEIA's Petition, and the time for doing so has expired.

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 for leave to intervene. Petitions for leave to

¹ Florida Power & Light, Co., Progress Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company, Orlando Utilities Commission and JEA, respectively.

² Gulf Power Company, Progress Energy Florida, Inc., Florida Public Utilities Company, Tampa Electric Company and Florida Power & Light, respectively.

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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 set forth 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, Florida Statutes (F.S.), 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 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 Farmworkers 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, 406 So. 2d 478. 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 FlaSEIA meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders. The FlaSEIA's electric rates of the individual members and companies will be directly impacted by the conservation cost recovery factors set in this docket. The members are also the entities that will provide the solar equipment and services necessary for implementation of the utilities' solar pilot programs. Pursuant to Rule 25-22.039, F.A.C., FlaSEIA takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Ronald Brisé, as Prehearing Officer, that the Petition to Intervene filed by Florida Solar Energy Industry Association is hereby granted as set forth in the body of this Order. 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:

Florida Solar Energy Industry Association
c/o Suzanne Brownless, PA
433 North Magnolia Drive
Tallahassee, Florida 32308
Phone: (850) 877-5200
Fax: (850) 224-7662
suzannebrownless@comcast.net

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 7th day of
October, 2011.



RONALD A. BRISÉ
Commissioner and Prehearing Officer
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TLT

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

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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.