

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Environmental cost recovery clause.

DOCKET NO. 140007-EI
ORDER NO. PSC-14-0355-PCO-EI
ISSUED: July 11, 2014

ORDER GRANTING INTERVENTION

Background

On May 28, 2014, 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). On June 3, 2014, Duke Energy Florida (DEF) filed its Response to SACE's Petition to Intervene (Response).

SACE's Petition

In its Petition, SACE asserts that it is a non-profit clean energy corporation authorized to conduct operations in Florida and 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 interests of communities in the Southeast. SACE asserts that a substantial number of its members reside in the service territories served by the four largest investor-owned utilities, and it has been granted intervention in a number of Florida Public Service Commission (Commission) proceedings. 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, 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 interest 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.

DEF's Response

In its Response, DEF asserts that SACE's Petition should be denied, in part, because SACE cannot demonstrate that it has standing to challenge cost recovery issues in this proceeding and cannot show that its substantial interests will be affected by the Commission's decision regarding environmental cost recovery factors. DEF argues that the Commission's decision of cost recovery factors for environmental compliance programs, which the Commission has already determined as prudent in prior dockets, will not affect the interests that SACE exists to protect; therefore, SACE cannot prove it has associational standing to participate

in the cost recovery portion of this docket. DEF asserts that SACE's participation should be limited to the environmental policy aspects of this docket. In its Response, DEF (1) references Order No. PSC-03-1199-PCO-EI,¹ in which the Commission denied SACE's Petition to Intervene; (2) discusses the two-pronged test for standing established in *Agrico Chem. Co. v. DEP*, 406 So.2d 478 (FLA 2d DCA 1981); and (3) recounts the Commission's test for associational standing set forth in Order No PSC-99-1474-PCO-EI, issued on July 29, 1999, in Docket No. 990188-EI, *In re: Generic investigation into the requirement for individual electric metering by investor-owned electric utilities pursuant to Rule 25-6.049(5)(a), F.A.C.* DEF further asserts that SACE must demonstrate that a substantial number of its members have a substantial interest that is affected by the Commission's decision, the subject matter of the proceeding is within its general scope of interest, and the relief being requested is of the type appropriate for it to receive on behalf of its members.

DEF asserts that SACE "cannot establish its standing to participate regarding cost-based issues in this proceeding." DEF argues that SACE exists to promote clean energy and not to advance the interests of its members in the rates they pay for electric service. DEF urges that, if allowed, intervention by SACE be limited to those issues for which it has a substantial interest. Relying on Order No. PSC-02-1260-PCO-EI, issued on September 13, 2002, in Docket No. 020262-EI, *In re: Petition to determine need for an elec. power plant in Martin County by Fla. Power & Light Co.*, DEF asserts that SACE must prove, and not just allege, that it has standing. DEF asks that the Commission deny SACE's Petition in aspects of this docket that are not within its organizational purpose. To the extent that SACE is allowed to participate in this proceeding based on its allegations of standing, DEF reserves its right to challenge those allegations going forward.

Standard for Intervention

Rule 25-22.039, F.A.C., provides, in relevant part:

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....

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

¹ Issued on October 22, 2003, in Docket No 030001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.*

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

Upon review, it appears that SACE meets the three-prong associational standing test established in *Florida Home Builders*. With respect to the first prong of the associational standing test, 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. With respect to the second prong of the associational standing test, SACE argues that the subject matter of the proceeding is within SACE's general scope of interest and activity. SACE contends that, consistent with its mission, it wishes to ensure that environmental compliance activity is carried out in the most prudent, reasonable, and cost effective means possible. To this end, SACE asserts that it intends to examine incurred and projected costs and compliance options such as retirement of power plant units, increased reliance on clean, renewable energy resources, and greater end-use energy efficiency implementation, to help reasonably and cost-effectively meet environmental compliance objectives. Relying on Order No. PSC-13-0606-FOF-EI,² SACE asserts that the reasonableness and prudence of individual expenditures, and the investor-owned utilities' decisions on future compliance plans made in light of subsequent environmental rule developments, are the subject of this Commission's review. Thus, SACE asserts that the Commission's actions in this docket are "inexorably intertwined with the substantial interests of SACE and its members." As for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent its interests and the interests of its members. Because it appears that SACE meets the three-prong associational standing test established in *Florida Home Builders*, SACE's petition for intervention shall be granted as set forth herein.

Notwithstanding the granting of intervention to SACE, DEF is correct in its assertion that this case does, in substantial part, involve the review and approval of cost recovery factors for environmental compliance programs that this Commission has previously determined to be prudent. While issue development is an ongoing process, all issues should be germane to this proceeding, and 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., SACE takes the case as it finds it.

² Issued on November 19, 2013, in Docket No. 130007-EI, *In re: Environmental Cost Recovery Clause*.

Based on the foregoing, it is hereby

ORDERED by Julie I. Brown, as Prehearing Officer, that the Petition to Intervene by the Southern Alliance for Clean Energy is granted 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 docket, to:

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

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 11th day of July, 2014.



JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
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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.

CWM

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.