

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 160186-EI

In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.

DOCKET NO. 160170-EI
ORDER NO. PSC-16-0550-PCO-EI
ISSUED: December 8, 2016

ORDER GRANTING PETITION TO INTERVENE TO
SOUTHERN ALLIANCE FOR CLEAN ENERGY

Pursuant to Rule 25-6.140, Florida Administrative Code (F.A.C.), on August 12, 2016, Gulf Power Company (Gulf) filed a test year letter notifying this Commission of its intent to file a petition between October 11 and October 28, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., Gulf filed its Minimum Filing Requirements and testimony on October 12, 2016. The hearing on the rate case is scheduled for March 20 through March 24, 2017.

Petition for Intervention

On November 16, 2016, Southern Alliance for Clean Energy (SACE) filed a Petition for Intervention (Petition), requesting permission to intervene in this proceeding. SACE is a non-profit clean energy corporation that advocates for energy plans, policies, and systems that best serve the environmental, public health, and economic interest of communities in the Southeast, including Gulf Power's service territory in Florida. SACE asserts that it has a substantial number of Florida members that reside in Gulf's service territory. As ratepayers, SACE claims that its members would be adversely affected by the rate restructure proposed by Gulf in this proceeding, because the proposed rate restructure would result in a substantial increase in fixed charges. SACE asserts that Gulf's proposed rate increase and rate restructure will result in substantial bill increases to SACE's members.

Gulf's Response in Opposition to SACE's Petition for Intervention

Pursuant to Rule 28-106.205, F.A.C., Gulf filed a Response in Opposition to SACE's Petition on November 23, 2016. In its Opposition, Gulf objects to SACE's intervention, asserting that SACE (i) lacks standing to intervene in an electric rate proceeding; (ii) seeks to improperly expand the scope of the proceeding; and (iii) seeks to re-litigate issues already decided. Gulf asserts that it does not agree with, or concede, any of the facts alleged in SACE's Petition, including any allegations of standing, and requests that SACE's Petition be denied. No other party filed an objection to SACE's Petition, and the time for doing so has expired.

Gulf asserts that SACE failed to demonstrate that it has standing to intervene in an electric utility base rate proceeding and cannot show that its substantial interests or the interests of its members will be affected by the Commission's determination in the proceeding. Gulf disputes that SACE has a substantial number of members in its service territory and that a Commission decision on the base rates of an electric utility will affect the interests of SACE or its members. Therefore, Gulf claims SACE cannot prove it has associational standing to intervene in a base rate proceeding.

In addition, Gulf requests that, should SACE be granted intervention, SACE's participation be limited to matters and issues properly within the scope of an electric rate proceeding, and should be required to prove any allegations that the Commission concludes would warrant intervention. To the extent that SACE is allowed to participate in this proceeding based on its allegations of standing, Gulf reserves its right to challenge those allegations going forward.

Motion for Leave to Reply to Response in Opposition

On November 30, 2016, SACE filed a Motion for Leave to Reply to Response of Gulf Power Company in Opposition to Petition to Intervene (Motion) with an attached proposed reply. SACE asserts that good cause exists to allow it to file a reply to Gulf's Opposition. SACE disputes Gulf's claim that SACE is attempting to re-litigate issues it has raised and lost in other proceedings, in the current electric rate proceeding. SACE asserts that it simply seeks to litigate the issues presented by Gulf in this proceeding, and those already identified by staff as likely issues. Thus, SACE states that a reply will help clarify its intentions in this proceeding, and will help correct misrepresentations and erroneous legal assertions contained in Gulf's Opposition. SACE conferred with OPC and Gulf on its motion and neither takes a position on SACE's motion for leave to reply.

Decision on Request to Provide a Reply

A reply to a response to a motion is not contemplated by the Uniform Rules or Rule 28-106.204, F.A.C. It is generally not the Commission's practice to allow an additional pleading into the pleading cycle established by rule. Therefore, SACE's Motion is denied.

Standards for Intervention

Rule 25-22.039, F.A.C., provides:

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. Intervenors take the case as they find it.

To have standing in an administrative proceeding, an 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 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 prong of the test addresses the degree of injury. The second addresses 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); 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).

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 the SACE meets the two-prong standing test in Agrico, as well as, the three-prong associational standing test established in Florida Home Builders. The purpose of this proceeding is to determine the fair, just and reasonable electric rates to be charged by Gulf. The substantial interests of SACE’s members are affected by this proceeding, since increases in the cost of electricity directly affect their monthly electric bills. Therefore, SACE’s members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, to have standing in an administrative proceeding, an association must demonstrate that a substantial number of its members are substantially affected by the proceeding. Florida Home Builders, 412 So. 2d at 353. Under Florida law, neither a specific number, nor percentage of association members, is required for standing. Hillsborough County v. Florida Restaurant Ass’n, Inc., 603 So. 2d 587, 589 (Fla. 2nd DCA 1992)(court found standing where 37 of 2,766 members were affected, because a substantial number of the members residing in the county at issue were affected). Here SACE asserts that it has members located in Gulf’s service territory that receive electric service from Gulf, for which they are charged Gulf’s applicable service rates. Accordingly, SACE states that its members will be substantially affected by this Commission’s determination in this rate

proceeding. Although SACE has not previously intervened in an electric rate case proceeding at this Commission, the Commission has recognized SACE's standing in other proceedings in which Gulf was a party and there was no opposition by Gulf.¹ Thus, I find that SACE meets the first prong of the associational standing test.

With respect to the second prong, the subject matter of the proceeding appears to be generally within the SACE's general scope of interest and activity. SACE is an association organized with the purpose of advocating for the use of clean energy alternatives to mitigate fossil fuel generation, for which recovery is sought in this rate case. An electric utility's rates and rate structure impact all customers, including those that employ energy alternatives and/or conservation measures. Thus, I find that SACE meets the second prong of the associational standing test.

As for the third prong, SACE seeks intervention in this docket to represent the interests of its members before the Commission in this proceeding. A trade or professional association has standing to participate in an administrative proceeding, even though it is acting solely as the representative of its members. Florida Home Builders, 412 So. 2d at 353. As stated above, SACE members will be substantially affected by this Commission's determination in this proceeding and the Commission has recognized SACE's standing in other proceedings that affected SACE's members. Finally, the Commission has granted intervention to other environmental groups in electric rate case proceedings.² Thus, I find the relief requested by SACE is of a type appropriate for an association to obtain on behalf of its members.

Finding that SACE meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, SACE's petition for intervention shall be granted. Pursuant to Chapter 120, F.S., SACE may offer testimony and provide evidence as to whether the rates, rate-structure, and charges proposed by Gulf are fair, just and reasonable. Notwithstanding the granting of intervention, however, I remind the parties that issues shall be limited to those appropriate to the scope of an electric rate case proceeding. While issue development is an ongoing process, all issues and testimony should be germane to this rate case proceeding.³ Disagreement as to the inclusion, scope or wording of particular issues will ultimately be resolved at the Prehearing Conference.

¹ Order No. PSC-14-0135-PCO-EI, issued March 18, 2014, in Docket No. 130202-EI, In Re: Commission review of numeric conservation goals (Gulf Power Company); Order No. PSC-09-0027-PCO-EG, issued January 9, 2009, in Docket No. 080410-EI, In Re: Commission review of numeric conservation goals (Gulf Power Company).

² Order No. PSC-16-0299-PCO-EI, issued July 27, 2016, in Docket No. 1600021-EI, In Re: Petition for rate increase by Florida Power & Light Company.

³ Order Nos. PSC-15-0540-PCO-EI, issued November 20, 2016, and PSC-15-0546-PCO-EI, issued November 24, 2016, in Docket No. 150196-EI, In Re: Petition for determination of need for Okeechobee Clean Energy Center Unit 1, by Florida Power & Light Company; and Order No. PCS-14-0355-PCO-EI, issued July 11, 2014, In Re: Environmental cost recovery clause.

Pursuant to Rule 25-22.039, F.A.C., SACE takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Jimmy Patronis, as Prehearing Officer, that the Petition 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's Motion for Leave to File Reply to Response of Gulf Power Company in Opposition to Petition to Intervene is denied. It is further

ORDERED that the issues and testimony shall be limited to those appropriate in scope and germane to an electric rate case proceeding. 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:

Southern Alliance for Clean Energy
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By ORDER of Commissioner Jimmy Patronis, as Prehearing Officer, this 8th day of December, 2016.



JIMMY PATRONIS
Commissioner and Prehearing Officer
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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.

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.