

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C., Florida
Power & Light Company.

DOCKET NO. 20220051-EI
ORDER NO. PSC-2022-0214-PCO-EI
ISSUED: June 17, 2022

ORDER GRANTING SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
MOTION FOR LEAVE TO FILE AMENDED PETITION TO INTERVENE AND GRANTING
AMENDED PETITION TO INTERVENE

Docket No. 20220051-EI was opened to review the Storm Protection Plan (SPP) filed by Florida Power & Light Company (FPL) under Section 366.95(5), Florida Statutes (F.S.). FPL's SPP docket is consolidated for purposes of hearing with the SPP dockets for Florida's other investor-owned electric utilities by Order No. PSC-2022-0119-PCO-EI, issued on March 17, 2022. The Office of Public Counsel (OPC) and Florida Industrial Power Users Group (FIPUG) are parties to the FPL docket.

By petition dated May 19, 2022, the Southern Alliance for Clean Energy (SACE) seeks permission to intervene. FPL responded in opposition on May 23, 2022. On May 25, 2022, SACE filed a Motion for Leave to Amend along with its Amended Petition. OPC and FIPUG do not oppose SACE's intervention.

SACE Petition to Intervene

SACE alleges it is a non-profit, clean energy corporation whose purpose is to advocate for energy plans, policies, and systems that best serve the environmental, public health, and economic interest of communities in the Southeast, including Florida, and recovery of costs associated with such plans, policies, and systems. SACE's guiding mission is to promote reasonable and equitable energy choices to ensure clean, safe, and healthy communities. According to SACE, it has over 200 members who are FPL customers, and their electric rates will be affected if the Commission approves the winterization programs proposed by FPL. SACE also argues that any decisions related to system reliability will affect the health and safety of the SACE members who are FPL customers. In addition, SACE argues the Commission's decision in this docket will affect the substantial interests of its members, and consistent with other Commission dockets where SACE was granted intervention, the association has standing to intervene.

FPL Response in Opposition

FPL argues that SACE's petition should be denied because SACE's purpose, mission, and allegations of affected interests are beyond the transmission and storm hardening programs and projects at issue. According to FPL, the fundamental flaw in SACE's argument is that the Commission does not approve or set rates that customers will pay in the SPP dockets. The prudence and reasonableness of costs, and resulting rates, for any approved plans or projects will

be addressed in the annual Storm Protection Plan Cost Recovery Clause (SPPCRC) docket. In addition, FPL argues that SACE's allegations that the resolution of reliability issues will affect the health and safety of SACE's members is also off point. The statutory objective of this proceeding is to strengthen electrical transmission and distribution facilities to withstand extreme weather conditions, but the purpose and mission of SACE is directed to energy choices, which are outside the scope of the SPP docket. According to FPL, all prior cases where SACE was granted intervention dealt with generation, renewable energy sources, conservation, fuel costs, environmental issues, or energy efficiency. Notwithstanding the prior dockets where the Commission determined SACE had standing to participate, SACE must prove it has standing to intervene in this SPP docket.

SACE's Motion for Leave to Amend and Amended Petition

SACE seeks permission to amend its petition to clarify how its substantial interests are affected and thus has associational standing. SACE attached its Bylaws, as amended October 1, 2017, to its amended petition. The Bylaws, in Article II, specifically state that among the purposes of SACE is "to perform educational research and programs concerning the environment, public health, and *economic impacts of the energy use and policy* in the Southeast; and to advocate for energy plans, policies, and systems that best serve the environmental, public health, and *economic interest, including recovery of costs associated with such plans*, policies and systems, of communities in the Southeast." (Emphasis added). SACE clarifies that because the Commission's decision in the SPP docket will affect the scope of costs in subsequent cost recovery proceedings, intervention is appropriate because this is the proceeding where the Commission will determine whether FPL has approval to go forward with its plan or a modified plan. According to SACE, it intends to protect the economic interests of its members related to FPL's proposed SPP, consistent with its Bylaws.

Standards for Intervention

Pursuant to Rule 28-106.205, 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 move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), 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 three-prong standing test set forth in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in *Agrico Chemical Company v. Department of*

Environmental Regulation, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).¹ 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. *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.

Analysis & Ruling

SACE's Motion for Leave to File an Amended Petition is granted, and thus, the Amended Petition will be considered. Having reviewed the pleadings and arguments raised by SACE and FPL, it appears SACE has met the three-prong associational standing requirements of *Florida Home Builders*. As to the first prong, a substantial number of SACE's Florida members reside in FPL's service territories, and their substantial interests will be affected by the Commission's decision because any agency action concerning FPL's SPP will affect the scope of costs in subsequent cost recovery proceedings. In particular, since FPL included new Winterization Programs as part of its SPP, it appears the \$215 million projected cost of these programs could affect the substantial interests of SACE's members. As to the second prong, SACE's Bylaws direct SACE to advocate concerning the economic interests of its members and communities in the Southeast. Because the scope of future cost recovery proceedings will be impacted by the Commission's decision, the SPP subject matter of this proceeding is within the association's general scope of interest and activity. In addition, this SPP proceeding is the appropriate venue for SACE to provide input concerning the validity and scope of FPL's new underlying winter weather and load forecasts, which ultimately affects the economic interests of SACE's members. As to the third prong, SACE seeks the ability to advocate on behalf of its members' economic interests concerning the economic impact of FPL's SPP, which is the type of relief authorized by SACE's bylaws. For these reasons, SACE's amended petition to intervene is granted. As an intervenor, SACE takes the case as it finds it.

Based on the above representations, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that Southern Alliance for Clean Energy's Motion for Leave to File an Amended Petition for Intervention is granted. It is further

¹ Under *Agrico*, 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 aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. 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. 3d 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).

ORDERED that Southern Alliance for Clean Energy' Amended Petition to Intervene is granted. It is further

ORDERED that Southern Alliance for Clean Energy takes the case as it finds it. 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:

George Cavros
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, Florida 33334
george@cavros-law.com

By ORDER of Commissioner Mike La Rosa, as Prehearing Officer, this 17th day of June, 2022.



Mike La Rosa
Commissioner and Prehearing Officer
Florida Public Service Commission
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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.

WLT

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.