

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to determine need for Polk Unit 6 electrical power plant, by Tampa Electric Company. | DOCKET NO. 070467-EI  
| ORDER NO. PSC-07-0695-PCO-EI  
| ISSUED: August 24, 2007

ORDER GRANTING CONDITIONAL INTERVENTION

On July 20, 2007, Tampa Electric Company (TECO) filed a petition for a determination of need for a proposed electrical power plant in Polk County pursuant to Section 403.519, Florida Statutes, and Rule 25-22.080, Florida Administrative Code. Pursuant to Order No. PSC-07-0639-PCO-EI, issued August 6, 2007, the matter has been scheduled for a formal administrative hearing on October 10-11, 2007.

SACE's Petition for Intervention

By petition, dated August 13, 2007, the Southern Alliance for Clean Energy (SACE) requested permission to intervene in this docket. According to SACE, it 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. SACE has 37 members in the southwest and west-central Florida region served by TECO and 1,781 members in Florida overall. In its petition, SACE states that a substantial number of its members reside in the area that is served by and would be affected by the proposed TECO plant, and that these members would be substantially affected by the proposed TECO coal-fired power plant.

In its petition, SACE contends that it is entitled to intervene in this matter based on the following assertions: (1) as consumers of electricity in the TECO service area, some SACE members' substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant because TECO's participation in the plant will impact the rates that will be charged to these petitioners; (2) SACE members will be directly affected by the cost impacts of future carbon regulation; (3) SACE members will be directly affected by the inappropriate reliance on new capacity instead of less expensive and readily available improvements in efficiency and other demand side alternatives; and (4) construction of the plant will subject SACE members and other Floridians to health and environmental consequences due to decisions that rely on sources of energy such as coal.

Standards of Intervention

Pursuant to Rule 25-22.039, Florida Administrative Code, 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), Florida Administrative Code, and must include allegations sufficient to demonstrate that the

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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. 2d DCA 1981). The intervenor must show (1) that he will suffer an 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. 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).

Further, the test for associational standing, which 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), 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 SACE meets the two prong standing test in Agrico, as well as the three prong associational standing test established in Florida Home Builders. SACE asserts that its substantial interests are of sufficient immediacy to entitle it to participate in this proceeding and are the type of interests that this proceeding is designed to protect. With respect to the first prong of the associational standing test, SACE, on behalf of its affected Florida members, asserts that, as retail electric customers of TECO, their substantial interests will be directly affected by the Commission's decision whether to permit the proposed plant because, if approved, TECO's construction of the plants will impact the rates TECO will charge these petitioners (see SACE's first assertion). With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within SACE's general scope of interest and activity. SACE contends that its members will be directly affected by the inappropriate reliance on new capacity instead of considering other alternatives. In need determination proceedings, the Commission considers whether the proposed plant is the most cost-effective alternative available (see SACE's third assertion). As for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent the interests of its members.

Based on the foregoing analysis, SACE's standing in this docket has been established. With regard to SACE's second and fourth assertions of standing, however, SACE's petition fails to state grounds upon which intervention can be granted. Specifically, in its second assertion of standing, SACE contends that its members will be directly affected by the cost impacts of future carbon regulation, which would increase the rates and charges that its members will be forced to pay TECO. Such assessments are speculative and conjectural, rather than real and immediate in nature. Additionally, in its fourth assertion of standing, SACE contends that construction of the plant will subject SACE's members to health and environmental consequences of decisions which rely on coal as energy. Section 403.519, Florida Statutes, establishes that the Commission is the exclusive forum to determine the need for an electrical power plant. Issues of environmental compliance, however, are under the purview of the Florida Department of Environmental Protection. Therefore, SACE's allegation of substantial injury with respect to this assertion is not of a type or nature which this proceeding is designed to protect.

Staff counsel has contacted counsel for TECO, who states that TECO does not intend to object to SACE's intervention in this matter.

As discussed above, SACE has demonstrated that it has the requisite standing to intervene in this matter. According to its petition, however, SACE is also a non-profit corporation organized under the laws of Tennessee. A review of the records of the Florida Department of State, Division of Corporations, indicates that SACE does not currently hold a valid certificate of authority in Florida, and that its certificate was revoked by the Florida Department of State in 2004 for failure to file its annual report. Section 617.1502(1), Florida Statutes, provides that a foreign not-for-profit corporation conducting its affairs in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority. Although the term "proceeding" is not specifically defined within Chapter 617, Florida Statutes, Chapter 607, Florida Statutes, which addresses similar matters regarding for-profit corporations, provides that a "proceeding" includes civil, criminal, administrative, and investigatory actions (see Section 607.01401(20), Florida Statutes).

### Conclusion

In conclusion, SACE meets the two prong standing test in Agrico, as well as the three prong associational standing test established in Florida Home Builders; therefore, SACE's petition for intervention shall be conditionally granted subject to the following:

- (a) SACE shall be precluded from raising arguments supporting its second and fourth assertions of standing. Pursuant to Rule 25-22.039, Florida Administrative Code, the petitioner takes the case as it finds it.
- (b) SACE intervention shall be conditioned upon SACE filing proof with this Commission, by no later than the September 24, 2007, Prehearing Conference, that SACE has a valid certificate of authority issued by the Florida Department of State.

- (c) SACE failure to obtain a valid certificate of authority issued by the Florida Department of State prior to the September 24, 2007, Prehearing Conference will result in its dismissal from this proceeding.

Therefore, it is


ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene is conditionally granted with respect to the Southern Alliance for Clean Energy as set forth herein. It is further

ORDERED that SACE shall file proof with this Commission, by no later than the September 24, 2007, Prehearing Conference, that SACE has a valid certificate of authority issued by the Florida Department of State. SACE's failure to obtain a valid certificate of authority issued by the Florida Department of State will result in its dismissal from this 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:

George Cavros, Esquire  
Southern Alliance for Clean Energy  
120 E. Oakland Park Blvd., Suite 105  
Fort Lauderdale, FL 33334  
(954) 563-0074 (office)  
(954) 565-8052 (fax)  
[george@cavros-law.com](mailto:george@cavros-law.com)

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 24th day of August, 2007.

  
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NATHAN A. SKOP  
Commissioner and Prehearing Officer

( S E A L )

JSB

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 25-22.060, 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.