

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG ORDER NO. PSC-09-0062-PCO-EG ISSUED: January 27, 2009

ORDER GRANTING INTERVENTION

Section 366.82, Florida Statutes (F.S.), part of the Florida Energy Efficiency and Conservation Act (FEECA), requires the Commission to adopt goals to increase the efficiency of energy consumption, increase the development of demand-side renewable energy systems, reduce and control the growth rates of electric consumption and weather-sensitive peak demand, and encourage development of demand-side renewable energy resources. Pursuant to Section 366.82(6), F.S., the Commission must review a utility's conservation goals not less than every five years. These statutes are implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code (F.A.C.). By Order No. PSC-08-0816-PCO-EG, issued December 18, 2008, Docket Nos. 080407-EG, 080408-EG, 080409-EG, 080410-EG, 080411-EG, 080412-EG, and 080413-EG were consolidated for purposes of the hearing and the matter has been scheduled for a formal administrative hearing on August 24-28, 2009. The Utilities which filed these seven dockets are hereinafter "FEECA Utilities."

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Petition for Intervention

On December 15, 2008, the Florida Solar Coalition (FSC) filed a Petition to Intervene (Petition) in this docket. The purpose of the FSC is to develop the full potential of solar energy in Florida by stimulating investment in solar power and thereby creating a self-sustaining vibrant solar energy market in Florida which will decrease dependence on fossil fuels and increase quality technical jobs for Florida's citizens. The FSC is comprised of three organizations: the Florida Solar Energy Industries Association, the Vote Solar Initiative, and the Solar Alliance.

The FSC contends that some of its members are retail electric customers of the FEECA Utilities and that some its members are engaged in developing demand-side renewable energy resources, and these members have standing to intervene for the following reasons: (1) the retail electric customers members' substantial interests will be directly affected by the Commission's decision in this docket because they will directly bear the costs of the programs presented by the FEECA Utilities; (2) the demand-side renewable energy developer members' substantial interests will be directly affected because the Commission is specifically required to set FEECA goals pursuant to section 366.82(2), F.S. in order to encourage the increased development of demand-side renewable energy resources; and (3) this type of proceeding is designed to protect the interests of FSC and its members. No party filed a written response to the FSC's Petition.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 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 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 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 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 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 and Ruling

It appears that the FSC has satisfied the two-prong standing test in Agrico. First, it appears that many members the FSC are retail electric customers of the FEECA Utilities. As retail customers, they will be substantially affected by this proceeding because they will bear costs of the programs presented by the FEECA Utilities if approved by the Commission. Second, this type of proceeding is designed to protect those members' interests. Thus, the Agrico standing test is satisfied for those FSC members who are retail customers of the FEECA Utilities.

It appears that the FSC has also satisfied the three-prong associational standing test in Florida Home Builders. With respect to the first prong, it appears that a substantial number of its members are retail customers of the FEECA Utilities. As retail customers, they will bear costs of the programs presented by the FEECA Utilities and approved by the Commission. Thus, a substantial number of the FSC members will be directly affected by this proceeding. With respect to the second and third prongs, the subject matter of the proceeding is within the FSC's general scope of interest and activity and the FSC is seeking intervention in this docket in order to represent the interests of its members. Therefore, based on the foregoing analysis, the FSC has standing to intervene in this docket.

### Conclusion

Because the FSC satisfies the two-prong standing test in Agrico, as well as the three-prong associational standing test established in Florida Home Builders, its petition for intervention shall be granted as set forth herein. Issue development is an ongoing process; while issues should be germane to this proceeding, 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., the petitioner takes the case as it finds it.


Based on the foregoing, it is

ORDERED by Chairman Matthew M. Carter II, as Prehearing Officer, that the Petition to Intervene is granted with respect to the Florida Solar Coalition 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 proceeding to:

Suzanne Brownless  
Suzanne Brownless, PA  
1975 Buford Blvd.  
Tallahassee, FL 32308  
(850) 877-5200  
(850) 878-0090 fax  
sbrownless@comcast.net

By ORDER of Chairman Matthew M. Carter II, as Prehearing Officer, this 27th day of  
January, 2009.



MATTHEW M. CARTER II  
Chairman and Prehearing Officer

( S E A L )

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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-

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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.