

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery clause. | DOCKET NO. 110002-EG
ORDER NO. PSC-11-0468-PCO-EG
ISSUED: October 17, 2011

ORDER GRANTING INTERVENTION

Pursuant to Rule 25-17.015(1), Florida Administrative Code, the Commission has a continuing Energy Conservation Cost Recovery (ECCR) – Electric Utilities docket. Pursuant to Order No. PSC-11-0136-PCO-EG, issued February 28, 2011, this matter has been scheduled for a formal administrative hearing on November 1-3, 2011.

Petition for Intervention

By petition dated October 3, 2011, Southern Alliance for Clean Energy (SACE), filed a Petition to Intervene (Petition) in this docket. SACE is a non-profit corporation that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities, throughout the Southeast, including the State of Florida. SACE asserts that it has a substantial membership base in Florida.

SACE states that in this docket, the Commission will approve the Demand-Side Management (DSM) expenditures and set conservation cost recovery factors for the five investor-owned utilities. SACE contends that if DSM programs are unnecessarily expensive, public support for energy efficiency will be undermined. SACE further states that its members in the affected utilities' territories will be directly affected if the Commission approves programs with unnecessarily high costs. SACE was an intervenor in Docket Nos. 080407-EG – 080413-EG where the Commission set conservation goals. SACE was also an intervenor in Docket Nos. 100154-EG, 100155-EG, 100159-EG and 100160-EG where the Commission approved DSM plans for the investor-owned utilities. Thus, SACE contends that the substantial interests of its members will be directly affected by the Commission's decision in this docket. No party has filed an objection to SACE's Petition, and the time for doing so has expired.

Responses to Petition for Intervention

Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), Florida Power & Light Company (FPL), Florida Public Utilities Company (FPUC) filed responses to SACE's Petition.¹ The companies did not challenge or object to SACE's right to intervene in this docket. The companies dispute SACE's disputed issues of material facts contained in paragraph 11 of the petition and Issues 7 - 11 on SACE's Preliminary List of Issues and Positions.² TECO specifically contends that the cost recovery docket is designed to consider the appropriate cost

¹ Responses were filed on October 6, 7 and 10, 2011, respectively.

² On October 3, 2011, SACE filed a Preliminary List of Issues and Positions concurrent with its Petition to Intervene.

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recovery factors of its DSM plans that have already been approved by the Commission by Order No. PSC-10-0736-PAA-EG, on December 20, 2010. FPUC contends that the Commission has recently reviewed and approved its DSM programs.³ FPL notes that SACE is limited to the litigation of issues as set forth in Rule 25-17.015, Florida Administrative Code (F.A.C.). FPL further notes that Rule 25-17.015(4), F.A.C. states that “[N]ew programs or program modifications must be approved prior to a utility seeking cost recovery.” and in this docket the companies seeks to recover costs associated with DSM programs already approved by the Commission.

Standard 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 set forth 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, Florida Statutes (F.S.), 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 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 Farmworkers 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, 406 So. 2d 478. 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.

³ SACE was granted intervenor status and participated in Docket 100158-EG. FPUC’s DSM programs were approved by Order No. PSC-10-0496-PC-EG, issued August 8, 2010.

Analysis & Ruling

It appears 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. With respect to Agrico, 406 So. 2d at 482, it appears that SACE's members may suffer injury in fact of sufficient immediacy which entitles its members to participate in this proceeding, and this type of proceeding is designed to protect those members' interests.

With respect to the first prong of the Florida Home Builders, 412 So. 2d at 351, associational standing test, SACE asserts that its Florida members, some of whom are customers of the five investor-owned utilities, will be directly affected by the Commission's decision in this docket. With respect to the second prong, the subject matter of this docket appears to be within SACE's general scope of interest and activity. As for the third prong, SACE is seeking intervention in this docket in order to represent the interests of its members. Based on the foregoing analysis, SACE has standing to intervene in this docket. 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 Ronald Brisé, as Prehearing Officer, that the Petition to Intervene filed by Southern Alliance for Clean Energy (SACE) is hereby 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 proceeding to:

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 17th day of
October, 2011.



RONALD A. BRISÉ
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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 25-22.0376, 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.