

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.

DOCKET NO. 140226-EI  
FILED: April 10, 2015

**PETITION TO INTERVENE BY  
SOUTHERN ALLIANCE FOR CLEAN ENERGY**

Pursuant to sections 120.569, 120.57, Florida Statutes, and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Southern Alliance for Clean Energy ("SACE"), through its undersigned counsel, petitions for leave to intervene in the above captioned docket and in support thereof states:

**I. AGENCY AFFECTED**

1. The name and address of the agency affected by this petition is

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**II. IDENTIFICATION OF THE INTERVENORS AND THEIR COUNSEL**

2. The name and address of Petitioner is:

Southern Alliance for Clean Energy  
P.O. Box 1842  
Knoxville, Tennessee 37901  
Telephone: (865) 637-6055

3. The name and address of counsel for Petitioners, authorized to receive all notices, pleadings, and other communications in this docket is:

George Cavros, Esq.  
Southern Alliance for Clean Energy

120 E. Oakland Park Blvd., Suite 105  
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(866) 924-2824 (fax)

### **III. RECEIPT OF NOTICE OF AGENCY'S PROPOSED ACTION**

4. Petitioners received notice of the Florida Public Service Commission's ("Commission") action on April 1, 2015 through its Order Establishing Procedure.

### **IV. THE INTERVENOR'S SUBSTANTIAL INTERESTS**

5. SACE is a non-profit clean energy corporation organized under the laws of the state of Tennessee and authorized to conduct operations in the State of Florida. The mission of SACE, as reflected in its bylaws, 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. SACE's stated mission is to promote responsible energy choices that create climate change solutions and ensure clean, safe and healthy communities throughout the Southeast. SACE places an especially high priority on the importance of thoroughly evaluating and implementing all cost-effective energy efficiency programs as a means of mitigating or displacing the need for new more costly non-renewable generation.

6. SACE has staff in Florida working to advance energy plans and policies that best serve the environmental, public health and economic interests of communities in Florida. In addition, there are 247 SACE members residing in Florida and dedicated to promoting responsible energy choices that achieve clean, safe and healthy communities. A substantial number of SACE's Florida members reside in the service territories of Florida Power & Light Company ("FPL") (104 members), Duke Energy Florida, Inc. ("DEF") (39 members), Tampa Electric Company ("TECO") (19 members), Gulf Power Company ("GPC") (17 members), and the Florida Public Utilities Company ("FPUC") (5 members).

7. To further its mission, SACE has presented experts and provided technical testimony in numerous forums throughout Florida, including before the Florida State Legislature, the Department of Environmental Protection, and this Commission. SACE has been granted intervention by this Commission in a number of energy efficiency, cost recovery and resource need proceedings, including *In re: Commission review of numeric conservation goals*, Docket Nos. 080407-EG – 080413-EG and 130199-EI – 130022-EI; *In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc.*, Docket No. 100160-EG; *In re: Petition of approval of demand-side management plan of Tampa Electric Company*, Docket No. 100159-EG; *In re: Petition of approval of demand-side management plan of Florida Power & Light Company*, Docket No. 100155-EG; *In re: Petition of approval of demand-side management plan of Gulf Power Company*, Docket No. 100154-EG; and in the *In re: Energy conservation cost recovery clause*, Docket Nos. 110002-EG- 140002-EG.

#### **STATEMENT OF AFFECTED INTERESTS**

8. Consistent with its mission, SACE and its members advocate for low cost, low risk resources to meet electricity demand, with a particular focus on meaningful levels of energy efficiency implementation and proper program design. SACE was a party in the Commission's most recent energy conservation cost recovery clause proceeding, Docket No. 140002-EG. On November 25, 2014, pursuant to Order No. PSC-14-0583-PHO-EG, issued on October 15, 2014, in Docket No. 140002-EG, the Commission opened the above-styled docket to address so-called "opt-out" issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) and Florida Industrial Power Users Group (FIPUG). Issues No. 4a, 4b and 4c raised in Docket No. 140002-EG will be addressed in this proceeding. Therefore, in this docket, the Commission will issue an order that sets forth approval, in whole or in part, or denial, of Wal-Mart and

FIPUG's requests related to the "opt-out" request. The request, if approved, would represent a dramatic shift in Commission policy on energy efficiency programs in Florida. A program that permits non-residential customers to "opt-out" of utility-sponsored energy efficiency programs, if not based on national best practices in *self-direct* programs, and with no meaningful evaluation, measurement and verification, will devalue energy efficiency as a resource in Florida and will necessarily shift a greater burden of energy conservation costs on to Florida's families and small businesses.

9. SACE members who are customers of FPL, Duke, TECO, Gulf, and FPUC will bear the cost of the Commission's decision in this docket. Moreover, the Commission's decisions will necessarily affect policy on energy efficiency as a resource in meeting demand, and may have a cascading effect on other resource decisions now and in the future for SACE members in the above-mentioned utilities' service territories. SACE additionally wishes to ensure that energy efficiency policy is not further eroded in Florida through an "opt-out." Hence, the Commission's order in the above captioned docket will necessarily affect the substantial interests of SACE and its members.

10. These are the type of interests this proceeding is designed to protect because the purpose of this case coincides with the substantial interests of SACE and its members. *Ameristeel Corp. v. Clark*, 691 So.2d 473 (Fla. 1997); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359 (Fla. 1982); *Florida Home Builders Ass 'n v. Department of Labor and Employment Security*, 412 So.2d 351, 353-54 (Fla. 1982).

11. SACE is authorized by its bylaws to represent its interests and the interests of its members in legal actions, including formal administrative actions such as these. The subject matter of this docket is well within the scope of interest and activities of SACE, and the relief

requested is the type of relief appropriate for SACE to receive on behalf of its members. The rights and interests of SACE and its members cannot be adequately represented by any other party in this docket, and intervention will not unduly delay or prejudice the rights of other parties.

12. SACE's intervention is timely and consistent with the Commission's Order Establishing Procedure, and Rule 25-22.039, F.A.C.

#### **V. STATEMENT OF DISPUTED ISSUES OF FACT**

13. The disputed issues of material fact in this proceeding include:

- a. Should the Commission require the utilities to separate their Energy Conservation Cost Recovery expenditures into two categories, one for Energy Efficiency programs and the other for Demand Side Management programs?
- b. Should the Commission allow pro-active non-residential customers who implement their own energy efficiency programs and meet certain other criteria to opt out of the utility's Energy Efficiency programs and not be required to pay the cost recovery charges for the utility's Energy Efficiency programs approved by the Commission pursuant to Section 366.82, Florida Statutes?
- c. If the Commission allows pro-active customers to opt out of participating in, and paying for, a utility's Energy Efficiency's programs, what criteria should the Commission apply in determining whether customers who wish to opt out are eligible to do so.

#### **VI. STATEMENT OF ULTIMATE FACT**

14. The ultimate facts alleged include, but not limited to the following: should the Commission approve Walmart's and FIPUG's request for an "opt-out" of utility sponsored energy efficiency programs?

## VII. STATUTES AND RULES THAT REQUIRE THE RELIEF REQUESTED

15. The rules and statutes that entitle SACE to intervene and participate in this case include, but are not limited to, the following:

- a. §120.569, Fla. Stat.;
- b. § 120.57, Fla. Stat.;
- c. R. 25-22.039 F.A.C.; and
- d. R. 28-106.205, F.A.C.

## VIII. RELIEF SOUGHT

16. WHEREFORE, the Southern Alliance for Clean Energy respectfully requests that the Commission enter an order granting it leave to intervene in the above-styled docket as a full party, and further requests parties to provide the undersigned with all pleadings, testimony, evidence and discovery filed in said dockets.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of April, 2015

/s/ George Cavros  
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*Counsel for Petitioner  
Southern Alliance for Clean Energy*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 10<sup>th</sup> day of April, 2015, to the following:

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