

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery  
clause.

DOCKET NO. 20210002-EG  
ORDER NO. PSC-2021-0181-PCO-EG  
ISSUED: May 19, 2021

ORDER GRANTING INTERVENTION

The Energy Conservation Cost Recovery (ECCR) Clause allows public utilities to seek recovery of costs for energy conservation programs on an annual basis, pursuant to Sections 366.80-366.83, Florida Statutes (F.S.), and Chapter 25-17.015, Florida Administrative Code (F.A.C.). As part of the Florida Public Service Commission's (Commission's) continuing energy conservation cost recovery proceeding, the Commission has set a hearing in this docket for November 2 – 4, 2021. Order No. PSC-2021-0075-PCO-EG, issued on February 10, 2021, set forth the procedural requirements for all parties to this docket. The public utilities that are parties to this docket are Florida Power & Light Company (FPL), Gulf Power Company (Gulf), Duke Energy Florida, LLC (DEF), Tampa Electric Company (TECO), and Florida Public Utilities Company (FPUC). Other parties to this docket include the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate).

Petition for Intervention

By motion dated April 12, 2021, the Southern Alliance for Clean Energy (SACE) filed its Petition for Intervention. SACE states that it is a non-profit clean energy corporation organized under the laws of Tennessee and authorized to conduct operations in the State of Florida. SACE explains that its mission 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 affirms that as part of its mission, it advocates for scaling up implementation of energy efficiency as a resource for electric utilities. SACE provides that it has presented experts and provided technical and policy testimony in numerous forums throughout Florida, including before the Commission. SACE continues that it has been granted party status in numerous dockets that relate to economic impacts to customers, and was a party to the ECCR Clause docket from 2011 to 2014.

SACE contends that there are a substantial number of SACE members residing in FPL, Gulf, DEF, and TECO's service territories. SACE asserts that in this proceeding, the Commission will decide which DSM program costs have been prudently incurred by utilities, and the conservation cost recovery factors that will be applied to and recovered through electricity bills. SACE argues that residential customers of the electric utilities that are parties to this proceeding, including those that are SACE members, will be affected by the decisions that flow from this docket.

SACE avers that this proceeding substantially affects the purpose and mission of SACE and its members in advocating for responsible and equitable energy choices that best serve the economic and environmental interests of Floridians, including those that are SACE members. SACE alleges that its interests are exactly the type this proceeding is designed to protect. SACE contends that the type of relief requested is appropriate on behalf of SACE members, because the subject matter of this proceeding is within the scope and interest of the activities of SACE as set forth above. SACE is authorized by its bylaws to represent its interests and the interests of its members in administrative proceedings.

Pursuant to Rule 28-106.204(3), Florida Administrative Code (F.A.C.), SACE contacted the parties to this proceeding, and states that FPL, Gulf, DEF, TECO, FPUC, FIPUG, and PCS Phosphate take no position on its Petition for Intervention. SACE also contacted the Office of Public Counsel but was not able to identify its position by the time it filed its Petition.

### Standards for Intervention

Pursuant to Rule 28-106.205, 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).<sup>1</sup> 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

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<sup>1</sup> 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).

Based on the above representations, it appears SACE has met the associational standing requirements of *Florida Home Builders* as stated above. As to the first prong, SACE asserts that a substantial number of its Florida members reside in FPL, Gulf, DEF, and TECO's service territories, and that the substantial interests of those members will be affected by the decision in this proceeding. As to the second prong, the subject matter of this proceeding falls within the purview of SACE's general scope of interest. Also, SACE has represented its members' interests before this Commission, including in this docket in previous years. As to the third prong, the type of relief requested is appropriate for SACE to receive on behalf of its members, as SACE is seeking a decision in this proceeding that considers SACE's interests and the interests of SACE's members.

Based on the above representations, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by the Southern Alliance for Clean Energy is hereby granted as set forth in the body of this Order. It is further

ORDERED that the 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, FL 33334  
(954) 295-5714  
[george@cavros-law.com](mailto:george@cavros-law.com)

By ORDER of Commissioner Andrew Giles Fay, as Prehearing Officer, this 19th day of May, 2021.



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ANDREW GILES FAY  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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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.

AJW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 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

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appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.