

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).

DOCKET NO. 20190015-EG

In re: Commission review of numeric conservation goals (Gulf Power Company).

DOCKET NO. 20190016-EG

In re: Commission review of numeric conservation goals (Duke Energy Florida, LLC).

DOCKET NO. 20190018-EG

In re: Commission review of numeric conservation goals (Orlando Utilities Commission).

DOCKET NO. 20190019-EG

In re: Commission review of numeric conservation goals (JEA).

DOCKET NO. 20190020-EG

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 20190021-EG
ORDER NO. PSC-2019-0137-PCO-EG
ISSUED: April 17, 2019

ORDER GRANTING INTERVENTION

On January 15, 2019, Docket Nos. 20190015-EG, 20190016-EG, 20190017-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG were established to review and adopt the corresponding utility's conservation goals pursuant to Sections 366.80-366.83 and 403.519, Florida Statutes, known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). By the Order Consolidating Dockets and Establishing Procedure, Order No. PSC-2019-0062-PCO-EG, issued on February 18, 2019, the dockets were consolidated for purposes of hearing and controlling dates were established. The dockets are currently scheduled for hearing from August 12, 2019, through August 16, 2019.

Petition for Intervention

By motion dated March 20, 2019, the Southern Alliance for Clean Energy (SACE) requested permission to intervene in this proceeding with respect to only Docket Nos. 20190015-EG, 20190016-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG. 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. SACE states that it has more than 330 members residing in Florida, a substantial number of which reside in the service territories of

Florida Power & Light Company (FPL), Gulf Power Company (Gulf), Duke Energy Florida, LLC (DEF), Orlando Utilities Commission (OUC), JEA, and Tampa Electric Company (TECO). SACE asserts that it advocates for energy plans, policies, and systems that best serve the environmental, public health, and economic interests of communities in the Southeast, including Florida.

SACE maintains that, in this proceeding, the Commission will determine the numeric conservation goals for FPL, Gulf, DEF, OUC, JEA, and TECO that will affect the scope, number, quality, and type of energy efficiency programs those utilities will offer to customers, including SACE's Florida members. SACE contends that the cost of the programs to support the goals set by the Commission will be passed on to customers, including those customers who are members of SACE. As such, SACE asserts that the substantial interests of its members will be affected by this proceeding and that the Commission's order will affect the mission of SACE and its members and their pecuniary interests.

SACE provides that it is authorized by its bylaws to represent its interests and the interests of its members in formal administrative proceedings, such as this. SACE alleges that its interests are of the type that this proceeding is designed to protect, that the subject matter of this docket is well within the scope of interest and activities of SACE, and that the relief requested is the type of relief appropriate for SACE to receive on behalf of its members. Further, SACE alleges that the rights and interests of SACE and its members cannot be adequately represented by any other party in this docket.

Standards for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code (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).¹ Associational standing

¹ 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

may be found when: (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.

Decision

Based on SACE's representations, it appears that SACE has met the associational standing requirements of Florida Home Builders. As to the first prong, SACE asserts that a substantial number of its Florida members reside in the service territories of FPL, Gulf, DEF, OUC, JEA, and TECO and that the substantial interests of those members will be affected by the decision in this case. As to the second prong, the subject matter of this docket falls within the purview of SACE's general scope of interest and activity related to advocating for energy plans, policies, and systems that best serve the environmental, public health, and economic interests of communities in the Southeast, including Florida. 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. Further, SACE asserts that it is authorized by its bylaws to represent its interests and the interests of its members in formal administrative proceedings such as this.

Pursuant to Rule 28-106.204(3), F.A.C., all motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Further, any statement that the movant was unable to contact the other parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted. It appears that SACE failed to meet this requirement. However, SACE appears to have served a copy of its motion on the other parties to this proceeding and the time to file a response in opposition to SACE's motion has expired. Nonetheless, SACE should have informed the Commission in its motion whether any parties objected, after conferring with them, or provided a statement that it attempted to contact the parties. The requirement to confer does not mean informing other parties of an impending motion, but rather conducting a discussion to determine whether there is an objection.

SACE is reminded that the Uniform Rules of Procedure apply to Commission proceedings, and it will be expected to comply with these rules in the future.

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).

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Based on the above representations, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Petition to Intervene filed by the Southern Alliance for Clean Energy is hereby granted as to Docket Nos. 20190015-EG, 20190016-EG, 20190018-EG, 20190019-EG, 20190020-EG, and 20190021-EG, 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:

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(954) 295-5714
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By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 17th day
of April, 2019.



DONALD J. POLMANN, Ph.D., P.E.
Commissioner and Prehearing Officer
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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.

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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.