

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of approval of demand-side management plan of Progress Energy Florida, Inc.

DOCKET NO. 100160-EG
ORDER NO. PSC-10-0498-PCO-EG
ISSUED: August 9, 2010

ORDER GRANTING INTERVENTION

On March 30, 2010, Progress Energy Florida, Inc. (PEF) filed its Petition for Approval of its Demand-Side Management (DSM) Plan.

Petition for Intervention

By petition dated April 12, 2010, the Southern Alliance for Clean Energy (SACE) filed a Petition to Intervene (Petition) in this docket. SACE, is a non-profit organization that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including in the State of Florida. According to SACE, it has a substantial membership base in Florida.

SACE states that in this docket, the Commission will review the DSM plan that PEF has submitted in response to Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG – 080413-EG. SACE further states proper DSM program design and implementation is critical to PEF meeting the conservation goals established by the Commission in a cost-effective manner. SACE contends that if PEF's programs are not well designed or properly implemented, the delivery of cost-effective energy efficiency in Florida will suffer. SACE further contends that, upon the Commission's approval of the DSM programs, its members will bear the costs of the programs. SACE was an intervenor in Docket Nos. 080407-EG – 080413-EG where the Commission set conservation goals. 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.

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 days before the evidentiary 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 by the proceeding. Intervenors take the case as they find it.

DOCUMENT NUMBER-DATE

06571 AUG -9 0

FPSC-COMMISSION CLEAR

To have standing, the intervenor must satisfy the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d 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, 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. 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).

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 & Ruling

It appears that SACE satisfies the two-prong standing test in Agrico, 406 So. 2d at 482, as well as the three-prong associational standing test established in Florida Home Builders, 412 So. 2d at 351. 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 PEF, 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.

Conclusion

Because SACE satisfies the two prong standing test in Agrico, 406 So. 2d at 482, as well as the three prong associational standing test established in Florida Home Builders, 412 So. 2d at 351, SACE's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., the petitioners takes the case as it finds it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition to Intervene filed by the Southern Alliance for Clean Energy 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:

George Cavros, Esq.
120 E. Oakland Park Blvd, Ste. 105
Fort Lauderdale , FL 33334
Telephone: 954.563.0074
Facsimile: 866.924.2824
george@cavros-law.com

By ORDER of the Florida Public Service Commission this 9th day of August, 2010.



ANN COLE
Commission Clerk

(S E A L)

KEF

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.