

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 130199-EI

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

DOCKET NO. 130200-EI

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

DOCKET NO. 130201-EI

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

DOCKET NO. 130202-EI

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

DOCKET NO. 130203-EM

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

DOCKET NO. 130204-EM

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

DOCKET NO. 130205-EI
ORDER NO. PSC-14-0097-PCO-EU
ISSUED: February 7, 2014

ORDER GRANTING INTERVENTION

Section 366.82, Florida Statutes (F.S.), part of the Florida Energy Efficiency and Conservation Act (FEECA), requires the Commission to adopt goals to increase the efficiency of energy consumption, increase the development of demand-side renewable energy systems, reduce and control the growth rates of electric consumption and weather-sensitive peak demand, and encourage development of demand-side renewable energy resources. Pursuant to Section 366.82(6), F.S., the Commission must review a utility's conservation goals no less than every five years. The FEECA statutes are implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code (F.A.C.). By the Order Establishing Procedure, Order No. PSC-13-0386-PCO-EU, issued August 19, 2013, Docket Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM were consolidated for purposes of hearing and controlling dates were established. The Order Establishing Procedure scheduled a formal administrative hearing on July 21- 25, 2014.

Order No. PSC-13-0645-PAA-EU (Proxy Order), issued December 4, 2013, approved the use of a proxy methodology to establish numeric goals for both Orlando Utilities Commission and Florida Public Utilities Company. The Proxy Order excused OUC and FPUC from the filing and participation requirements set forth in Order No. PSC-13-0386-PCO-EU.

Petition for Intervention

By petition, dated December 18, 2013, Sierra Club has requested permission to intervene in this proceeding. Sierra Club is a national, non-profit environmental and conservation organization incorporated under the laws of the State of California. Sierra Club states that it has more than 27,000 members who live and purchase utility service in Florida, many of whom are residential customers of FEECA Utilities. Sierra Club asserts that it seeks to reduce power sector pollution through equitable public health and environmental safeguards, and through the rapid replacement of fossil fuel-burning generation with competitive clean energy resources.

Sierra Club states that, in this proceeding, the Commission will update numeric goals for the FEECA Utilities to save energy through conservation and energy efficiency measures. The costs of such programs will be funded by Florida ratepayers, which include Sierra Club members. Sierra Club contends that its Florida members rely on the goals set by the Commission to ensure that the utilities implement the full range of cost-effective measures and programs to maximize savings from conservation, efficiency, and demand-side renewable resources in Florida, as an alternative to burning more fossil fuels. Sierra Club further asserts that its interest in the overall success of these measures and programs is in keeping with Section 366.81, F.S., to protect “the health, prosperity, and general welfare” of Floridians.

Duke Energy Florida’s (DEF) Response to Petition

On December 26, 2013, DEF filed a response to the Sierra Club’s Petition to Intervene stating that it does not object to Sierra Club’s intervention as a representative organization on behalf of its members to advocate on the energy conservation and renewable energy issues. DEF asserts that it does not agree with or concede any of the facts alleged in Sierra Club’s Petition, including any allegations of standing.

No other party filed an objection to Sierra Club’s Petition, and the time for doing so has expired.

Standard for Intervention as an Association

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. Intervenor takes the case as they find it.

To have associational standing, the intervenor must satisfy the test for associational standing set forth in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and extended to Section 120.57(1), F.S., hearings by Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982). 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. Florida Home Builders at 353.

Analysis & Ruling

It appears that Sierra Club satisfies the three-prong associational standing test established in Florida Home Builders. With respect to the first prong of the Florida Home Builders associational standing test, Sierra Club, on behalf of its affected members, asserts that many of its members will be directly affected by the Commission's decisions on the appropriate conservation goals and programs. Sierra Club contends that its members will be directly affected by the Commission's decisions in this proceeding due to the impact on electric rates. With respect to the second prong of the associational standing test, the subject matter of the proceeding is clearly within the Sierra Club's general scope of interest and activity because Sierra Club represents its members and their environmental and conservation concerns. As for the third prong of the associational standing test, Sierra Club is seeking intervention in this docket in order to represent the interests of its members in this proceeding. Based on the foregoing analysis, Sierra Club's standing in this proceeding has been established. Pursuant to Rule 25-22.039, F.A.C., Sierra Club takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Ronald A. Brise, as Prehearing Officer, that Sierra Club's Petition to Intervene 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:

ORDER NO. PSC-14-0097-PCO-EU

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130205-EI

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 7th day of
February, 2014.



RONALD A. BRISE
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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.

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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.