

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-14-0329-PCO-EI
ISSUED: June 25, 2014

EU *(initials)*
6-26-14

ORDER DENYING INTERVENTION TO
THE ALLIANCE FOR SOLAR CHOICE

BY THE COMMISSION:

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, 130204-EM, and 130205-EI were consolidated for purposes of hearing and controlling dates were established.

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On February 26, 2014, Order No. PSC-14-0112-PCO-EU, modified the Order Establishing Procedure and set hearing dates for July 21-23 and July 30-31, 2014. Order No. PSC-14-0154-PCO-EU, issued April 7, 2014, and Order No. PSC-14-0189-PCO-EU, issued April 22, 2014, established the issues and modified procedural filing dates, respectively.

Petition for Intervention

By petition, dated December June 10, 2014, The Alliance for Solar Choice (TASC) has requested permission to intervene in this proceeding. The Alliance for Solar Choice is an advocacy group that represents the vast majority of the rooftop solar industry market in the United States. TASC's members include Demeter Power Group, SolarCity Corporation, Solar Universe, Sungevity, Sunrun, and Verengo Solar. TASC states that several of its members have an operational or business presence in the state of Florida and are responsible for over one hundred rooftop solar installations within the state. TASC asserts that it seeks to support policies that enable greater numbers of customers to exercise the choice to self-generate electricity from clean, onsite renewable generation.

TASC states that, in this proceeding, the Commission will determine numeric goals for the FEECA Utilities to save energy through conservation and energy efficiency measures. TASC states that customer-sited distributed solar generation is recognized as a demand-side resource and the final determination in this proceeding will have a direct and substantial impact on policies that encourage the expansion of such resources in the state. TASC contends that this proceeding will affect its members operating in Florida, specifically SolarCity Corporation and Demeter Power Group. TASC further asserts that its purpose is to create and defend opportunities for demand-side resource market growth and its members cannot be adequately represented by any other party in this docket.

Joint Response in Opposition to Petition to Intervene

On June 16, 2014, Duke Energy Florida, Inc., Florida Power & Light Company, Gulf Power Company, JEA and Tampa Electric Company (FEECA Utilities) filed a response in opposition to TASC's Petition to Intervene. The FEECA Utilities argue that TASC's Petition to Intervene does not satisfy either prong of the two-pronged test for standing to intervene as set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d. 478 (Fla. 2nd DCA 1981). The FEECA Utilities argue that TASC will not suffer an injury in fact of sufficient immediacy to entitle it to a hearing and does not allege an injury that is of a type of nature which the proceeding is designed to protect. The FEECA Utilities contend that an injury asserted cannot be remote, speculative, abstract or indirect, and further argue that no injury can be asserted by TASC. The FEECA Utilities contend that TASC's members have a competitive, economic interest in getting more business if the FEECA Utilities have DSM programs that promote customer-sited demand-side goals, which is outside the zone of interest that the demand-side goals are intended to protect.

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The FEECA Utilities further state that the Commission has previously considered and denied petitions to intervene in the DSM proceedings by persons whose interests are in commercial opportunities that may result due to the outcome of the proceedings.¹

Motion for Leave to Reply to the Joint Response in Opposition

On June 18, 2014, TASC filed a Motion for Leave to Reply to the Joint Response in Opposition to The Alliance for Solar Choice's Petition to Intervene. TASC argues that allowing a reply will assist the Commission's consideration of issues and will not delay the Commission's administration of this proceeding. TASC alleges that there are factual mischaracterizations of TASC's member companies' operations contained in the FEECA Utilities' Joint Response. TASC argues that a reply will allow TASC to refute the FEECA Utilities' assertions regarding the TASC member companies and their relationships with Florida ratepayers. TASC further argues that a reply would allow TASC to address the recent amendments to the FEECA Act and its difference to the Commission's previous decisions referenced by the FEECA Utilities. TASC states that the FEECA Utilities oppose TASC's petition, and the Environmental Defense Fund, Florida Industrial Power Users Group, Sierra Club, Southern Alliance for Clean Energy, Wal-Mart, PCS Phosphate, and the Office of Public Counsel do not take a position on its petition.

Decision on Request to Provide a Reply

A reply to a response to a motion is not contemplated by the Uniform Rules or Rule 28-106.204, F.A.C. It is not Commission practice to allow an additional pleading into the pleading cycle established by rule. Upon consideration, TASC's June 18, 2014, Motion is denied.

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. Intervenors take 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)(for rule challenges), 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

¹ See Order No. PSC-95-1346-S-EG, Issued November 1, 1995, Docket No. 941173-EG, In Re: Approval of Demand-Side Management Plan of TAMPA ELECTRIC COMPANY and Order No. PSC-95-1343-D-EG, issued No. November 1, 1995, Docket No. 941170-EG, In Re: Approval of Demand-Side Management Plan of FLORIDA POWER & LIGHT COMPANY.

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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

Upon review of the pleadings and consideration of the arguments, TASC does not appear to satisfy 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, TASC argues that its members will experience a direct and substantial impact by the final determination on policies that encourage the expansion of customer-sited distributed solar generation in Florida. The FEECA dockets, pursuant to Section 366.82, Florida Statutes (F.S.), 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. TASC has not shown that they are in immediate danger of direct injury as a result of the outcome of the FEECA proceeding. Rather, TASC simply contends that its members will be directly affected by the Commission's decisions in this proceeding because its members are engaged in the financing, installation, or operation and maintenance of customer demand-side resources. TASC's alleged impact to its commercial and economic interest is speculative and indirect. Furthermore, the rooftop solar market and customer driven demand side management are not directly affected by this proceeding, and the commercial interest of rooftop solar providers is not the type of interest that these proceedings are designed to protect.

With respect to the second prong of the associational standing test, TASC argues that the subject matter of the proceeding has direct implications on the rooftop solar market consistent with its organizational purpose to create and defend opportunities for demand side resources market growth. As the Commission has stated in a previous proceeding, while FEECA encourages the use of solar energy and other renewable resources, it was not designed to protect the competitive economic interests of the solar industry.² TASC's interest in this proceeding is beyond the scope of the energy conservation purposes FEECA was designed to protect and promote.

As for the third prong of the associational standing test, TASC is seeking intervention in this docket in order to represent the interests of its members in this proceeding. However, there is no relief in the FEECA dockets that would be appropriate for the association to receive on behalf of its members.

² Order No. PSC-95-1346-S-EG.

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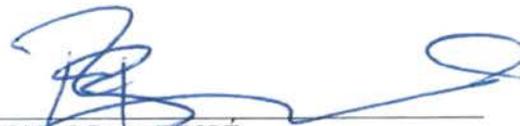
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For the reasons stated above, TASC's petition to intervene does not meet the legal standard for intervention as an association and therefore, the petition is denied. I note that the TASC's Rebuttal Testimony and Witness Exhibits filed on June 10, 2014, shall not be considered in this proceeding. In addition, I find that the Joint Motion to Strike "Rebuttal" Testimony and Exhibit of Nathanael Miksis filed by the FEECA Utilities on June 23, 2014 is rendered moot.

Therefore, it is

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that The Alliance for Solar Choice's Petition to Intervene is hereby denied.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 25th day of June, 2014.



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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.

TLT

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.

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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.