

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to opt-out of cost recovery for investor-owned electric utility energy efficiency programs by Wal-Mart Stores East, LP and Sam's East, Inc. and Florida Industrial Power Users Group.

DOCKET NO. 140226-EI  
ORDER NO. PSC-15-0201-PCO-EI  
ISSUED: May 19, 2015

ORDER GRANTING INTERVENTION

On November 25, 2014, pursuant to Order No. PSC-14-0583-PHO-EG, issued October 15, 2014, in Docket No. 140002-EG, the Commission opened this docket to address issues raised by Wal-Mart Stores East, LP and Sam's East, Inc. (Wal-Mart) and Florida Industrial Power Users Group (FIPUG). The Order Establishing Procedure, Order No. PSC-15-0149-PCO-EI issued on April 1, 2015, established a prehearing conference for July 7, 2015, and an administrative hearing has been set for July 22-23, 2015.

Petition for Intervention

By petition, dated April 10, 2015, Southern Alliance for Clean Energy (SACE) has requested permission to intervene in this proceeding. 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 there are 247 SACE members residing in Florida who are dedicated to promoting responsible energy choices that achieve clean, safe, and healthy communities. SACE asserts 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.

Standards 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.

To have standing, the intervenor must meet the two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 472 (Fla. 2nd 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 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 aspect 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. 3rd DCA 1990). See also Village Home Assn. 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 to 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 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 SACE meets the two-prong test set forth in Agrico, 406 So. 2d at 482. SACE has a substantial number of SACE’s Florida members who reside in the service territories of Florida Power & Light Company (104 members), Duke Energy Florida, Inc. (39 members), Tampa Electric Company (19 members), Gulf Power Company (17 members) and the Florida Public Utilities Company (5 members). In addition, the Commission’s decision will affect its policy on energy efficiency as a resource and may affect other resource decisions that will affect the SACE members located in the utilities’ service territories now and in the future.

It further appears that SACE 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, SACE, on behalf of its affected members, asserts that many of its members will be directly affected by the Commission’s decisions on energy efficiency as a resource in meeting demand. SACE contends that its mission and the pecuniary interests of its members will be directly affected by the Commission’s decisions in this proceeding. SACE further states that it has an interest in ensuring that energy efficiency policy is not further eroded in Florida through an “opt-out” of cost recovery for investor-owned electric utility energy efficiency programs. With respect to the second prong of the associational standing test, the subject matter of the proceeding is clearly within SACE’s general scope of interest and activity because SACE represents its members and their environmental and conservation concerns. Thus, it satisfies the second prong of the associational standing test established in Florida Home Builders. As for the third prong of the associational standing test, SACE is seeking intervention in this docket in order to represent the interests of its members in this proceeding. Based on the foregoing analysis, SACE’s standing in this proceeding has been established. Pursuant to Rule 25-22.039, F.A.C., SACE takes the case as it finds it.

Therefore, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that the Petition to Intervene filed by Southern Alliance for Clean Energy is hereby granted. 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  
e-mail: [george@cavros-law.com](mailto:george@cavros-law.com)  
(954) 295-5714 (tel)  
(866) 924-2824 (fax)

By ORDER of Chairman Art Graham, as Prehearing Officer, this 19th day  
of May, 2015.

  
ART GRAHAM  
Chairman and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
[www.floridapsc.com](http://www.floridapsc.com)

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.