

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO. 20210015-EI
ORDER NO. PSC-2021-0136-PCO-EI
ISSUED: April 16, 2021

ORDER GRANTING SOUTHERN ALIANCE FOR
CLEAN ENERGY'S PETITION TO INTERVENE

On March 12, 2021, Florida Power & Light Company (FPL) filed a petition, minimum filing requirements, and testimony for a base rate increase effective January 2022. As part of its request, FPL is seeking to consolidate its rates with those of Gulf Power Company (Gulf), recently acquired by FPL's parent company. Pursuant to Order No. PSC-2021-0116-PCO-EI, issued March 24, 2021, the hearing for the FPL rate case is scheduled on August 16 through August 27, 2021.

Petition for Intervention

On March 26, 2021, the Southern Alliance for Clean Energy (SACE) filed its Petition to Intervene (Petition). SACE is a non-profit clean energy corporation organized under the laws of Tennessee and authorized to conduct operations in the State of Florida. The purpose of SACE is to advocate for energy plans, policies, systems, and cost recovery that best serve the environmental, public health, and economic interest of communities in the Southeast, including Florida. SACE represents that it has staff working in Florida to advance energy choices consistent with its purpose that will serve the economic, environmental, and public health interests of all Floridians, including SACE members. SACE further represents that over 180 of its members who are ratepayers and dedicated to advancing SACE's purpose and mission reside in FPL's and Gulf's service territories, and that these members constitute a substantial number of SACE's membership. SACE asserts that it has presented experts and provided technical testimony and comments on a wide range of utility issues in various forums throughout Florida, including before the Commission. In furtherance of its purpose and mission, continues SACE, the organization has petitioned to intervene and been granted party status in numerous dockets before the Commission.

SACE asserts that the multi-year rate plan, if approved, will allow FPL to raise its revenue requirement and that the cost to support this additional revenue requirement will be borne in part by SACE members who are FPL and former Gulf customers through their power bills. SACE continues that its members, as ratepayers, could also be directly and substantially affected by FPL's proposed multi-year rate plan if the federal regulatory landscape shifts to goals or requirements for moving the electricity sector to net zero emissions. SACE asserts that this proceeding will provide SACE and other parties, and the Commission, the opportunity to test the prudence of investment in capital projects and expenses prior to costs being passed on to FPL customers, including FPL and former Gulf customers that are SACE members. SACE also avers that the multi-year rate plan substantially affects the purpose and mission of SACE because it includes numerous capital projects and other newly proposed programs and policies in the

multiyear rate plan that substantially affect the clean energy purpose and mission of SACE and its members.

SACE represents that FPL, Florida Industrial Power Users Group, the Federal Executive Agencies, the Florida Retail Federation, the League of United Latin American Citizens of Florida, the Environmental Confederation of Southwest Florida, Inc., and Florida Rising take no position with respect to the Petition. SACE was unable to identify the position of the Office of Public Counsel prior to filing its Petition. No written objections to SACE's Petition have been filed and the time for doing so has expired.

Standard for Intervention

Pursuant to Rule 28-106.205, 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 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. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

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 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).

Analysis & Ruling

Based upon a review of the materials provided by SACE, it appears that SACE meets the associational standing test established in Florida Home Builders. With respect to the first prong of the associational standing test, SACE asserts that a substantial number of its members are located in FPL's and Gulf's service areas and receive retail electric service from FPL and Gulf, for which they are charged FPL's/Gulf's applicable service rates. Accordingly, SACE states that its members will be substantially affected by this Commission's determination in this rate and base rate consolidation proceeding. As to the second prong, the subject matter of this proceeding falls within the purview of SACE's general scope of interest and activity related to advocacy for its Florida members through its advocacy for equitable utility policies and rates. As for the third prong of the associational standing test, SACE seeks intervention in this docket to represent the interests of its members as SACE is seeking a decision in this proceeding that considers SACE's interests and the interests of SACE's members. The relief requested by SACE is of a type appropriate for an association to obtain on behalf of its members.

Because SACE meets the three-prong associational standing test established in Florida Home Builders, SACE's petition for intervention shall be granted. Pursuant to Rule 28-106.205, F.A.C., SACE takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by the Southern Alliance for Clean Energy is hereby granted 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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By ORDER of Chairman Gary F. Clark, as Prehearing Officer, this 16th day of April, 2021.



GARY F. CLARK

Chairman 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.

SPS

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.