

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement
regarding PURPA solar qualifying facility
power purchase agreements, by Duke Energy
Florida, LLC.

DOCKET NO. 20180169-EQ
ORDER NO. PSC-2019-0036-PCO-EQ
ISSUED: January 14, 2019

ORDER GRANTING SOUTHERN ALLIANCE FOR CLEAN ENERGY'S
AMENDED MOTION TO INTERVENE

On September 7, 2018, Duke Energy Florida, LLC (“DEF”) filed a Petition for Declaratory Statement. DEF requests the Commission to declare that a negotiated term of two years is an appropriate contract length for a 100 percent levelized or fixed price in a Public Utility Regulatory Policies Act of 1978 (“PURPA”) solar qualifying facility (“QF”) power purchase agreement.

Amended Motion to Intervene

On October 1, 2018, the Southern Alliance for Clean Energy (“SACE”), a non-profit clean energy corporation, filed an Amended Motion to Intervene in this proceeding. SACE states 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. SACE has presented experts and provided technical and policy testimony in numerous forums through Florida, including this Commission. SACE has over 40 members who reside in DEF’s service territory and are DEF customers, which is a substantial number of SACE’s 328 Florida members.

SACE further states that policies that help accelerate the adoption of utility-scale solar projects further the mission of SACE and its members, including those policies contained in PURPA. According to SACE, the QF contract or power purchase agreement terms over which the Commission has jurisdiction are critical to the success of PURPA and the development of QF solar projects in Florida. According to SACE, if the Commission provides the declaratory statement requested by DEF, a two-year fixed price term would be so short a length that it would cripple a QF’s ability to attract capital from potential investors and QF solar projects will not get built. If market entry for cost-effective solar development is reduced, this may lead to a greater reliance on existing fossil fuel plants that would otherwise not be needed. This policy outcome is contrary to the mission of SACE and its members. Moreover, members of SACE who are DEF customers will pay more for solar power because of the suppressed competition from cheaper-priced QF solar facilities.

SACE argues that its interests are the type of interests that this proceeding is designed to protect and SACE has established that its injury is of sufficient immediacy to entitle it to a hearing under Section 120.57, Florida Statutes (“F.S.”). Additionally, SACE states that it has established associational standing as a substantial number of its members will be substantially

affected by the Commission's decision in this docket, the subject matter of the proceeding is well within SACE's scope of interest, and the relief requested is appropriate on behalf of SACE's members.

On October 5, 2018, DEF filed a Response to SACE's original and amended motions to Intervene. DEF states that it is uncertain whether SACE has pled sufficient facts to meet the standards to gain standing in this proceeding. However, DEF does not oppose SACE's Amended Motion to Intervene provided that SACE is required to prove the facts and allegations upon which it claims to meet the Commission standard for intervention. DEF further states that it disagrees with several other statements of fact and law in SACE's Motion which were unnecessary for SACE to assert standing to intervene. Among other things, DEF argues that the Federal Energy Regulatory Commission does not require that a PURPA contract be financeable and that approving its requested declaratory statement would ensure that the purpose of PURPA is implemented in a reasonable manner, balancing all interests and assuring that customers are not at risk for the next 20 to 30 years and paying too much for inflexible solar QF power.

Standards for Intervention

Rule 28-105.0027(1), F.A.C., sets forth the standards for the filing of a petition for leave to intervene in a declaratory statement proceeding. The rule states that:

[p]ersons other than original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule.

Subparagraph (2)(c) of Rule 28-105.0027, F.A.C., states that the motion to intervene shall include "[a]llegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement." 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 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 based on the basic standing principles established in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).¹ Associational standing may be found where: (1) the association demonstrates that a

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

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 and Ruling

I find that SACE's Amended Motion to Intervene complies with Rule 28-106.204(3), F.A.C., and that SACE has met the three-prong standing test set forth in Florida Home Builders. The Amended Motion includes allegations sufficient to demonstrate that it is entitled to participate because its substantial interests in advocating for policies that help accelerate the adoption of utility-scale solar projects, and the substantial interests of 40 of its Florida members who are DEF customers, may be substantially affected by the Commission's decision. The subject matter of the proceeding is within SACE's general scope of interest and activity, and SACE's request to intervene in this proceeding is a type of relief appropriate for SACE to receive on behalf of its members, whom SACE alleges will pay more for solar power if DEF's Declaratory Statement is granted. Therefore, the Amended Motion to Intervene is granted.

Based on the above representations, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Amended Motion 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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Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987) (finding that speculation on the possible occurrence of injurious events is too remote).

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 14th day
of January, 2019.



GARY F. CLARK
Commissioner 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.

RG

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.