

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-2019-0037-PCO-EQ
ISSUED: January 14, 2019

ORDER GRANTING SOLAR ENERGY INDUSTRIES ASSOCIATION'S
PETITION 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.

Petition to Intervene

On October 2, 2018, the Solar Energy Industries Association (“SEIA”), the national trade association of the U.S. solar energy industry, filed a Petition to Intervene in this proceeding. SEIA states that its members include dozens of stakeholders of the solar energy industry that have headquarters or locations in Florida, among them installers, manufacturers, contractors, developers, financiers and service providers doing business within the state, including within DEF’s service area. SEIA’s member companies are actively working to develop QFs throughout the state in accordance with the applicable state and federal regulations implementing PURPA.

SEIA further states that the issues presented in this proceeding are directly related to its defense of its members’ rights to obtain a financeable power purchase agreement from a purchasing utility. According to SEIA, if the Commission approves DEF’s request, its members will almost certainly find that their QF projects are no longer financially feasible, as they would be unable to attract financing at reasonable terms and conditions.

DEF attempted to timely file its response to the Petition to Intervene on October 9, 2018. The response was filed in the docket on October 15, 2018, upon the reopening of the Commission’s offices after Hurricane Michael. Thus, the response was timely filed. DEF states that it does not oppose SEIA’s Petition provided that SEIA be required to prove the facts and allegations upon which it claims to meet the Commission standard for intervention. Moreover, DEF disagrees with SEIA’s assertion that granting DEF’s Petition for Declaratory Statement would prevent companies from developing solar projects in Florida or that it will create economic harm to SEIA’s members. According to DEF, the Florida QF avoided cost methodology for PURPA power purchase agreements is not related to open-market competition because a specific utility must purchase any and all power produced by that solar QF at the utility’s full QF avoided cost.

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 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 SEIA’s Petition to Intervene complies with Rule 28-106.204(3), F.A.C., and that SEIA has met the three-prong standing test set forth in Florida Home Builders. The Petition includes allegations sufficient to demonstrate that it is entitled to participate because its substantial interests, and the substantial interests of its members who are DEF customers, may be substantially affected by the Commission’s decision. SEIA alleges that the issues presented by DEF in this proceeding are directly related to SEIA’s defense of its members’ rights to obtain a financeable power purchase agreement from a purchasing utility. According to SEIA, if the

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) (finding that speculation on the possible occurrence of injurious events is too remote).

Commission approves DEF's request, its members will almost certainly find that their QF projects are no longer financially feasible, as they would be unable to attract financing at reasonable terms and conditions. The subject matter of the proceeding is within SEIA's general scope of interest and activity, and SEIA's request to intervene in this proceeding is a type of relief appropriate for SEIA to receive on behalf of its members. Therefore, the Petition to Intervene is granted.

Based on the above representations, it is

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Petition to Intervene filed by the Solar Energy Industries Association is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Solar Energy Industries Association 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:

Heather Curlee
Wilson Sonsini Goodrich & Rosati, P.C.
701 Fifth Ave., Suite 5100
Seattle, WA 98104
Telephone (206) 883-2522
hcurlee@wsgr.com

Rich Zambo
Richard A. Zambo, P.A.
2336 S.E. Ocean Blvd., #309
Stuart, FL 34966
Telephone (772) 225-5400
richzambo@aol.com

Marsha E. Rule
Rutledge Ecenia, P.A.
119 South Monroe St., Suite 202
Tallahassee, FL 32301
Telephone (850) 681-6788
marsha@rutledge-ecenia.com

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



GARY F. CLARK
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
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.

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.