

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.

DOCKET NO. 20200176-EI
ORDER NO. PSC-2020-0366-PCO-EI
ISSUED: October 14, 2020

ORDER GRANTING INTERVENTION

BY THE COMMISSION:

On July 1, 2020, Duke Energy Florida, LLC (Duke or Company) filed a Petition for a Limited Proceeding to Approve Clean Energy Connection Program (CEC Program) and Tariff and Stipulation. The Clean Energy Connection Program is proposed by Duke as a voluntary community solar program that would allow participating customers to pay a subscription fee in exchange for receiving bill credits related to solar generation produced by solar facilities. The signatories to the stipulation are Duke, Vote Solar, Southern Alliance for Clean Energy, and Walmart Inc. In the Stipulation, Duke commits to certain programs designed to assist low-income customers, to further consider clean energy and net metering options, and to other conditions relating to implementing and monitoring the CEC Program. This docket is currently set for hearing on November 17, 2020.

Petition for Intervention

On August 26, 2020, Southern Alliance for Clean Energy (SACE) filed a petition to intervene in this proceeding. SACE is a non-profit clean energy corporation organized under the laws of Tennessee and authorized to conduct operations in the State of Florida. 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. As part of that mission, SACE states that it strongly supports and advocates for the development of solar power, including community solar programs. SACE has presented experts and provided technical and policy testimony in numerous forums throughout Florida, including this Commission. Prior to Duke submitting the CEC Program for Commission approval, SACE engaged in numerous conversations with the Company, reached agreement on improvements to the CEC Program, and became a signatory to the Stipulation that is attached to the Petition.

SACE maintain that, in this proceeding, the Commission will determine whether to approve the CEC Program and that its members have an interest in ensuring that the CEC Program maximizes economic benefit to customers, advances the adoption of low-cost, clean solar power, and is consistent with the mission of SACE and its members. Those interests are furthered by the negotiated provisions of the Stipulation. SACE states that a substantial number of its members reside within the Duke service territory and that those members have a substantial economic interest in ensuring the CEC Program promotes responsible energy choices that ensure clean, safe, and healthy communities. The CEC Program, if approved, will be accessible to Duke

customers who are also members of SACE. SACE asserts its members have both an environmental and pecuniary interest in the approval of the CEC Program. SACE is authorized by its bylaws to represent its interests and the interests of its members in administrative proceedings. SACE contends that the type of relief requested is appropriate on behalf of SACE members because the subject matter of the docket is within the scope and interest of the activities of SACE as set forth above.

Pursuant to Rule 28-106.204(3), Florida Administrative Code (F.A.C.), SACE contacted Duke and represented that the Company does not oppose the request for intervention. SACE also contact the Office of Public Counsel and the League of United Latin American Citizens of Florida, which take no position on this request.

Standards 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.

Decision

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).

Based on the above representations, it appears SACE has met the associational standing requirements of Florida Home Builders as stated above. As to the first prong, SACE asserts that a substantial number of its Florida members reside in the service territory of Duke, and that the substantial interests of those members will be affected by the decision in this 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 solar policies. As to the third prong, the type of relief requested is appropriate for SACE to receive on behalf of its members as SACE is seeking a decision in this proceeding that considers SACE's interests and the interests of SACE's members. Additionally, SACE is a signatory to the Stipulation and the decision in this proceeding directly affects SACE interests as furthered in that Stipulation and the required components of the CEC Program.

Based on the above representations, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Motion to Intervene filed by Southern Alliance for Clean Energy (SACE) is hereby granted as set forth in the body of this Order. It is further

ORDERED that Southern Alliance for Clean Energy (SACE) 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:

George Cavros
Southern Alliance for Clean Energy
120 E. Oakland Park Blvd., Suite 105
Fort Lauderdale, FL 33334
(954) 295-5714
george@cavros-law.com

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 14th day of October, 2020.



DONALD J. POLMANN, Ph.D., P.E.
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.

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.

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