

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy  
Florida, LLC.

DOCKET NO. 20240025-EI  
ORDER NO. PSC-2024-0184-PCO-EI  
ISSUED: June 4, 2024

ORDER GRANTING PETITION TO INTERVENE  
BY AMERICANS FOR AFFORDABLE CLEAN  
ENERGY, INC., CIRCLE K STORES, INC.,  
RACETRAC, INC., AND WAWA, INC.

Duke Energy Florida, LLC (Duke or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Petition for Intervention

On April 24, 2024, Americans for Affordable Clean Energy, Inc. (AACE), Circle K Stores, Inc., (Circle K), RaceTrac, Inc. (RaceTrac) and Wawa, Inc. (Wawa) filed a Petition to Intervene in this proceeding. The Petition makes the following allegations as to each petitioning intervenor:

1. AACE

AACE is a nonprofit association of fuel retailers. AACE seeks intervention on behalf of “its five fuel retailer members in Florida,” who collectively own and operate over 1,500 convenience stores, public travel facilities, and truck stops in the state. These locations offer fuel, goods, services, and other amenities. All members of AACE for whom intervention is sought are energy customers (ratepayers) of Duke, and rely on electricity to offer fuel and other services. Electric vehicle (EV) charging stations have been or may be deployed at some of the locations owned and operated by AACE members. The membership of AACE includes Circle K, RaceTrac, and Wawa.

2. Circle K

Circle K has over 60 years experience in the convenience retailing industry, and is currently the global brand of Alimentation Couche-Tard, Inc., which operates more than 16,700 stores in 29 countries and territories. Circle K operates approximately 150 convenience stores in

Duke's territory, and pays the Utility substantial amounts for electricity. Circle K operates EV chargers outside of Duke's territory, but "looks to expand its EV charging services."

3. RaceTrac

RaceTrac has been in business for 90 years and, together with affiliate RaceWay, currently operates over 800 stores over its entire footprint. RaceTrac has 78 refueling stations and one Store Support Center in Duke's territory. RaceTrac pays the Utility substantial amounts for electricity. RaceTrac offers EV chargers outside of Duke's territory, and looks to expand its EV charging services.

4. Wawa

Wawa currently operates 1,020 convenience stores, approximately 865 of which have motor vehicle refueling stations. Wawa has 79 locations in Duke's territory, 17 of which have EV charging stations, and plans to add 39 EV charging stations in the next 10 years. Wawa pays the Utility substantial amounts for electricity, and affordable and reliable electrical service is necessary for its operations.

DEF Response to Petition to Intervene

In its Response to the Petition, Duke states that it has verified that Circle K, RaceTrac, and Wawa (collectively "Fuel Retailers") are retail customers of the Utility. Duke raises no objection to the Fuel Retailers intervening as ratepayers of the Utility.

As to AACE, Duke raises no objection to the legal sufficiency of the allegations relating to standing. However, Duke questions whether AACE will be able to factually support the allegations and prove standing. Duke notes that AACE alleges that a substantial number of its members are ratepayers of the Utility, but does not provide a number or percentage. Duke also questions whether the general allegations made by AACE regarding its associational purpose and the relief it seeks for its members can ultimately be supported by facts that would allow the Commission to grant standing and afford relief to AACE.

Duke also argues that limitations should be placed on the "standing rights" of AACE and the Fuel Retailers. Duke avers that the intervenors' arguments regarding market competition and business interests and potential impacts on the EV market are beyond the scope of this proceeding. Duke also argues that concerns regarding the impact of green hydrogen on future fuel markets are too abstract and speculative to support standing.

The Fuel Retailers and AACE filed a "Response to Duke Energy's Motion to Limit Fuel Retailers' Intervention," and therein argued that the portion of Duke's Response requesting a limitation on standing was itself a motion and should be denied.

### Standards for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code (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.

The Fuel Retailers each argue that they are persons whose substantial interest may be impacted and, therefore, have standing to intervene as a party<sup>1</sup> under Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981) (Agrico). Under the standing test established in Agrico, an individual seeking to intervene in an administrative proceeding must show that (1) he will suffer injury in fact that 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 that the proceeding is designed to protect. 406 So. 2d at 482. The first aspect of the test deals with the degree of injury. The second 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. 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).

AACE argues that it has associational standing to represent its members, including the Fuel Retailers, under Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982) (Florida Home Builders). Under the test established in Florida Home Builders, an association seeking standing on behalf of its members must demonstrate that: (1) a substantial number of its members may be substantially affected by the agency’s decision; (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. 412 So. 2d at 353-54.

### Analysis & Ruling

The Fuel Retailers allege that they are retail energy customers of the Utility, and that their substantial interests as ratepayers will or may be affected by Duke’s request for a rate increase. Duke raised no objection to the Petition as it relates to these the Fuel Retailers, and “concedes that they have the substantial interest necessary to support standing to intervene.” Accordingly, the Petition shall be granted as to Circle K, RaceTrac, and Wawa.

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<sup>1</sup> See Fla. Stat. § 120.52(13)(b).

Taken as true, the allegations in the Petition regarding associational standing for AACE comply with the standard established in Florida Home Builders. Duke does not contest the sufficiency of those allegations. Therefore, the Petition shall be granted as to AACE.

While not requesting that the Petition be denied or found legally insufficient on its face, Duke questions whether the assertions in the Petition made in support of AACE's standing can be supported with record evidence, and whether the law will ultimately support a determination of standing based on the evidence presented. So that it may test the veracity of the allegations, Duke expressly reserved its right to engage in discovery. Accordingly, Duke may conduct discovery regarding the allegations made by AACE and any of the Fuel Retailers in support of their standing. Intervenors bear the ultimate burden of proof to demonstrate standing.

As noted above, Duke argues that limitations should be placed on the "standing rights" of AACE and the Fuel Retailers. The determination in this Order that the Petition shall be granted as to AACE and the Fuel Retailers is based solely upon the status of the individual intervenors and association members as Duke ratepayers. Intervention is not being granted based upon the alleged impacts of EV charger programs or the development of green hydrogen as an alternative fuel on economic interests or business competition. Such claims are beyond the scope of a base rate proceeding.<sup>2</sup> The impact of EV charger programs and green hydrogen on base rates and Duke ratepayers may or may not present appropriate issues for consideration in this docket. If necessary, this determination will be made by the Prehearing Officer in the Prehearing Order.

Based on the above representations, it is

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that the Petition to Intervene filed by Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac, Inc. and Wawa, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac, Inc. and Wawa, Inc. take the case as they find it. It is further

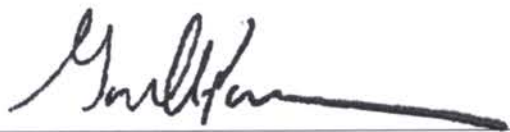
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<sup>2</sup> Order No. PSC-2021-01510PCO-EI, issued April 22, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general based rate increases, by Duke Energy Florida, LLC*. ("broad economic competition-based arguments for standing also do not satisfy the second prong of the Agrico test, because the injury . . . is not of a type or nature that this proceeding is designed to protect").

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 Commissioner Gabriella Passidomo, as Prehearing Officer, this 4th day  
of June, 2024.



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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.