

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0257-PCO-EI
ISSUED: July 22, 2024

ORDER DENYING PETITION TO INTERVENE
WITHOUT PREJUDICE

Duke Energy Florida, LLC (DEF or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. DEF 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, a final administrative hearing has been scheduled for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

On July 8, 2024, DEF and the Office of Public Counsel (OPC) filed a Joint Motion to Suspend Procedural Schedule. DEF and OPC represented in the Motion that they had reached an agreement in principle to resolve all issues in this docket, and requested that the Commission suspend all pending hearings, deadlines, and other matters in this docket. By Order No. PSC-2024-0234-PCO-EI, issued July 11, 2024, the Motion was granted. All pending discovery and scheduled hearings, including both the prehearing and final hearing, are currently suspended.

Petition to Intervene

On June 24, 2024, the Florida Solar Energy Industry Association (FLASEIA) filed a Petition to Intervene (Petition). In the Petition, FLASEIA states that it is a trade association founded in 1977 with a current membership of 186 companies that

include[s] solar manufacturers and distributors as well as Florida contractors, retailers and consultants who install and maintain solar water heating, pool heating and solar electric systems throughout Florida. FLASEIA membership also includes Gainesville Regional Utilities, Lakeland Electric Utilities, the Florida Solar Energy Center and Florida Solar Energy Research and Education Foundation.

FLASEIA represents that 74 of these members have a home office address in a county served by DEF. FLASEIA separately states that its members “reside throughout Florida and are both commercial and residential ratepayers of Florida Power & Light Company, Progress Energy of

Florida,¹ Tampa Electric Company, Gulf Power Company, Orlando Utilities Commission, GRU and JEA.”²

The purposes of FLASEIA set forth in the Petition are to uphold high ethical standards, professional licensing and qualifications, and safety and performance. FLASEIA also states that it represents and advocates on behalf of its members.

FLASEIA alleges that the proposed rate increases, if granted, will have a direct and substantial impact on its members (1) as DEF ratepayers and (2) in their roles in the solar and energy industry in Florida.

DEF Response in Opposition

On July 1, 2024, DEF filed a Response in Opposition to the Petition (Response). DEF first notes that FLASEIA has not specifically alleged that a substantial number of its members are ratepayers of the utility who will be affected by a base rate increase, and has only pleaded facts to support the conclusion that some of its members might be ratepayers. DEF continues that the stated goal of FLASEIA in the Petition is to protect and promote the solar industry, and that such a purely business interest is not within the scope of this proceeding. For these reasons, DEF asserts that FLASEIA has failed to allege that a substantial number of its members have substantial interests that are within the scope of this proceeding and that may be affected by the Commission’s decision.

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.

FLASEIA argues that it has associational standing to represent its members under *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982). 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

¹ By Order No. PSC-2013-0267-FOF-PU, issued June 12, 2013, Progress Energy Florida, Inc. changed its name to Duke Energy Florida, Inc. See Docket No. 20130141-PU, *In re: Request for acknowledgment of name change from Progress Energy Florida, Inc. to Duke Energy Florida, Inc. d/b/a Duke Energy*.

² GRU is the acronym for Gainesville Regional Utilities. JEA is the acronym for Jacksonville Electric Authority.

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.

Whether the individual members of FLASEIA are "substantially affected" is determined under the test established in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). Under *Agrico*, the person 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 hearing under Section 120.57, Florida Statutes (F.S.), 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) (speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

The first prong of *Florida Home Builders* requires that FLASEIA allege facts that, if proven, would demonstrate that a substantial number of its members may be substantially affected by the Commission's decision in this proceeding. FLASEIA alleges that 74 of its 186 members "have a home address in a county served by DEF." FLASEIA's assertion that 74 out of 186 (40%) is a "substantial number" of its members for purposes of associational standing is legally sufficient. *See ABC Fine Wine & Spirits v. Dep't of Bus. & Pro. Regul., Div. of Alcoholic Beverages & Tobacco*, 323 So. 3d 794, 798 (Fla. 1st DCA 2021) ("This equates to 42% of FISA's non-ABC membership holding COP licenses, which qualifies as a 'substantial number' of its members."). However, FLASEIA does not allege that DEF actually supplies electric service to those 74 members, or that DEF supplies electrical service to the entire county where those members have home addresses. Accordingly, FLASEIA has failed to plead facts that would demonstrate that these members are, in fact, affected by this proceeding as DEF ratepayers.

FLASEIA next states that an unspecified number of FLASEIA members "throughout Florida are both commercial and residential ratepayers of Florida Power & Light Company, Progress Energy of Florida, Tampa Electric Company, Gulf Power Company, Orlando Utilities Commission, GRU and JEA." This statement fails to specify how many, if any, FLASEIA members receive electric service from DEF.

FLASEIA separately asserts that a substantial number of its members may be substantially affected by the Commission's decision in this proceeding "in their roles in the solar and energy industry in Florida." The Petition contains sufficient allegations to support a reasonable inference that a substantial number of FLASEIA's members are involved in the solar and energy industry in Florida. However, the interest shared by these members and alleged by FLASEIA to be affected by the Commission's decision is not of a type that is appropriately addressed in this proceeding.

The Petition describes the members' interest as being in "Florida's competitive electric rates and a favorable business environment, including friendly business environment for distributed energy companies whose business model relies on local utility rates." An interest in economic competition is cognizable in an administrative proceeding only if it "falls within the zone of interest intended to be protected by the applicable statutes." *Fla. Soc. of Ophthalmology v. State Bd. of Optometry*, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988). This proceeding is governed by Chapter 366, F.S., which requires the Commission to establish rates that are fair, just, and reasonable. Business competition among industries and technologies is not a statutory component of this analysis and, therefore, not within the zone of interests cognizable in this proceeding.

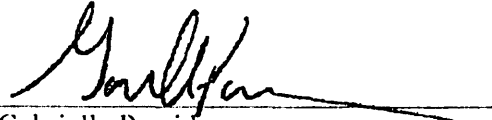
Conclusion

A petition to intervene must contain "[a]llegations sufficient to demonstrate . . . that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding." Rule 28-106.205(3), F.A.C. The instant Petition does not contain sufficient allegations that a substantial number of FLASEIA's members are affected as DEF ratepayers. The Petition sufficiently alleges that a substantial number of FLASEIA members are involved in the solar and energy industry in Florida. However, the competitive economic interest of these members that is alleged to be affected is not of a type or nature that the proceeding is designed to protect. For all of these reasons, the allegations in the Petition do not satisfy the first prong of *Florida Home Builders*. Accordingly, the Petition shall be dismissed. Because it does not conclusively appear on the face of the Petition that these defects cannot be cured, this denial is without prejudice. See Section 120.569(2)(c), F.S.

It is, therefore,

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that the Florida Solar Energy Industry Association's Petition to Intervene in Docket No. 20240025-EI is hereby denied without prejudice.

By ORDER of Commissioner Gabriella Passidomo, as Prehearing Officer, this 22nd day of July, 2024.



Gabriella Passidomo
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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

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appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.