

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-2020-0336-PCO-EI
ISSUED: October 1, 2020

ORDER GRANTING INTERVENTION

On July 1, 2020, Duke Energy Florida, LLC (Duke) filed a Petition for a Limited Proceeding to Approve Clean Energy Connection Program (CEC Program) and Tariff and Stipulation. The CEC 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

By motion dated July 15, 2020, the League of United Latin American Citizens of Florida (LULAC) requested permission to intervene in this proceeding. LULAC is a Hispanic civil rights organization with members residing in Florida, a substantial number of which reside in the service territories of Duke. LULAC asserts that it advocates for the economic condition, educational attainment, political influence, housing, health, and civil rights of the country's Hispanic population. As such, LULAC asserts that it maintains an interest in energy programs that affect the economic condition of its Florida members.

LULAC maintains that, in this proceeding, the Commission will determine whether to approve the CEC Program and if approved, the cost of the Program will be passed on to customers, including those customers who are members of LULAC. As such, LULAC asserts that the substantial interests of its members will be affected by this proceeding and that the Commission's order will affect the mission of LULAC and its members' pecuniary interests.

LULAC provides that it is authorized by its bylaws to represent its interests and the interests of its members in formal administrative proceedings such as this. LULAC alleges that its interests are of the type that this proceeding is designed to protect, that the subject matter of this proceeding is well within the scope of interest and activities of LULAC, and that the relief requested is of the type appropriate for LULAC to receive on behalf of its members. Further, LULAC alleges that the rights and interests of LULAC and its members cannot be adequately represented by any other party to this proceeding.

Response to Intervention by Duke

On July 22, 2020, Duke filed a response to LULAC's motion for intervention, representing that it does not oppose intervention, but does dispute the factual allegations of disproportionate impact made in the motion.

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.

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

Based on LULAC's representations, it appears that LULAC has met the associational standing requirements of Florida Home Builders. As to the first prong, LULAC 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

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).

the second prong, the subject matter of this proceeding falls within the purview of LULAC's general scope of interest and activity related to advocating for the economic condition of its Florida members through its advocacy for equitable energy policies. As to the third prong, the type of relief requested is appropriate for LULAC to receive on behalf of its members as LULAC is seeking a decision in this proceeding that considers LULAC's interests and the interests of LULAC's members. Further, LULAC asserts that it is authorized by its bylaws to represent its interests and the interests of its members in formal administrative proceedings such as this.

Based on the above representations, it is

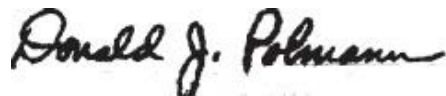
ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Motion to Intervene filed by League of United Latin American Citizens of Florida (LULAC) is hereby granted as set forth in the body of this Order. It is further

ORDERED that League of United Latin American Citizens of Florida (LULAC) 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:

Bradley Marshall
Jordan Luebke
Earthjustice
111 S. Martin Luther King Jr. Blvd.
Tallahassee, Florida 32301

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 1st 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.

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.