

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-2020-0393-PCO-EI
ISSUED: October 20, 2020

ORDER GRANTING INTERVENTION
TO WALMART INC.

BY THE COMMISSION:

On July 1, 2020, Duke Energy Florida, LLC (Duke) filed a Petition for a Limited Proceeding to Approve The Clean Energy Connection Program and Tariff and Stipulation. The Clean Energy Connection Program (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. This proceeding has been scheduled for an administrative hearing on November 17, 2020.

Petition for Intervention

By motion dated September 25, 2020, Walmart Inc. (Walmart) requested permission to intervene in this proceeding. Walmart states that it is a national retailer of goods and services throughout the United States with a significant presence in Florida. Walmart represents that it is a customer of Duke, having 73 retail units and one distribution center served by Duke. Walmart avers that it purchases more than 290 million kWh annually from Duke and that the cost of electric utility service is a significant element in the cost of operation for Walmart. Walmart also avers that it has a substantial commitment to renewable energy, is interested in having access to a renewable energy product within Duke's service territory, and is favorably interested in the structure and design of the proposed Clean Energy Connection Program and associated tariff. Walmart states that it advocates for increased reliance on solar power, and also strongly supports voluntary programs that expand customers' options for relying on solar power to meet their electricity needs. Walmart states it has an interest in ensuring the community solar program proposed by Duke is designed to fully and fairly value solar resources, maximize opportunities for participation, and bring the lowest cost solar resources to customers. Walmart represents that it engaged in numerous conversations with Duke in order to enhance the planned Program and tariff in furtherance of these goals. Walmart is a signatory to the proposed Stipulation.

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 two-prong standing test set forth in Agrico Chemical Company v. Department of Environmental Regulation (Agrico), 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor 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. 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).

Decision

Based on the above representations, it appears that Walmart has met the two-prong standing test in Agrico, 406 So. 2d at 482. Walmart is a large customer of Duke and may be substantially affected by the Clean Energy Connection Program, including the manners in which the Program promotes increased reliance on solar power. Walmart is a signatory to the proposed Stipulation that was submitted along with the tariff. Walmart has demonstrated that its substantial interests may be affected by this proceeding.

Based on the above representations, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Motion to Intervene filed by Walmart Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Walmart Inc. 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:

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By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 20th day of October, 2020.



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