

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Duke)
Energy Florida, LLC.) Docket No. 20240025-EI
_____) Filed: April 24, 2024

PETITION TO INTERVENE

Americans for Affordable Clean Energy, Inc. (“AACE”), Circle K Stores, Inc. (“Circle K”), RaceTrac Inc. (“RaceTrac”), and Wawa, Inc. (“Wawa”) (hereinafter, collectively, “Fuel Retailers” or “Intervenors”), pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.205, Florida Administrative Code, hereby file this Petition to Intervene in the above-captioned docket, and in support thereof state as follows:

1. **Party Identification.** The Fuel Retailers/Intervenors for this matter are:

Americans for Affordable Clean Energy, Inc.
1330 Braddock Place, Suite 501
Alexandria, VA 22314

Circle K Stores, Inc.
1130 W. Warner Rd., Building B.
Tempe, AZ 85284

RaceTrac, Inc.
200 Galleria Parkway SE, Suite 900
Atlanta, GA 30339

Wawa, Inc.
260 W. Baltimore Pike
Wawa, PA 19063

2. All pleadings, orders, notices, and other communications or filings in this docket should be provided to the following on behalf of the Fuel Retailers:

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3. **Affected Agency.** The affected agency is the Florida Public Service Commission (“PSC” or “Commission”), with a principal place of business at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

4. **Affected Party.** The affected utility in this docket is Duke Energy Florida, LLC (“Duke Energy”).

5. **Statement of Substantial Interests.** The Statement of Substantial Interests for each of the Fuel Retailers is as follows:

a. **AACE.** AACE is an established nonprofit association of fuel retailers that includes Circle K, RaceTrac, and Wawa, each of which is also intervening in this matter with AACE. AACE’s intervention in this matter is on behalf of its five fuel retailer members in Florida, all of whom are Duke Energy customers, representing more than 1,500 refueling locations across the state. AACE members include owners and operators of convenience stores, public travel facilities, and truck stops that provide fuel and other goods, services, and amenities at refueling stations throughout Florida and across the United States, primarily consisting of retail consumer goods, vehicle repair and service products, food, and fuel. In addition, AACE members are among Florida’s most sophisticated and forward-thinking fuel retailers. Currently, AACE members provide fuel for all shapes, forms and types of vehicles found on the nation’s roads today. Electric service is instrumental to the ability of the AACE members operating in the Duke Energy service area to offer any and all of their fuel and

other services to Floridians and the larger traveling public. In addition, electric vehicle (“EV”) charging for AACE members is just another type of transportation fuel, and the EV charging is totally dependent upon receiving reliable and affordable electric service. Thus, the rates, terms and conditions governing the provision of electricity to AACE members in the Duke Energy service territory will substantially and materially impact their ability to provide vehicle fueling services generally and especially EV charging services. Even more importantly, as the property owners and operators of sites at which EV charging stations have been or will be deployed, AACE members play a critical role in advancing the public policy goal of developing electricity fueled transportation through private investment, and the decisions in this docket will have a substantial and material impact on the ability of AACE members in the Duke Energy area to deploy and offer EV charging stations and services.

- b. **Circle K.** Circle K’s success in the convenience retailing industry spans more than 60 years, beginning in Texas and growing across the U.S. and internationally. Today, Circle K is the global brand of Alimentation Couche-Tard, Inc. (“Couche-Tard”). Couche-Tard is a global leader in convenience and mobility, operating in 29 countries and territories, with more than 16,700 stores, of which approximately 13,100 offer road transportation fuel. It is one of the largest independent convenience store operators in the United States and it is a leader in the convenience store industry and road transportation fuel retail in Canada, Scandinavia, the Baltics, as well as in Ireland. It also has an important presence in Poland and Hong Kong Special Administrative Region of People’s Republic of China and has recently expanded to Belgium, Germany,

Luxembourg, and the Netherlands. More than 150,000 people are employed throughout its network. Circle K is a leading destination for EV charging in Europe, with nearly 2,500 chargers at more than 500 locations. In addition, the company expects to have 200 locations across North America offering EV fast charging services by the end of 2024. Currently, there are approximately 820 Circle K locations in Florida, of which, 150 are located within Duke Energy's service area. Circle K's use of electricity makes Circle K a large retail customer of Duke Energy, paying Duke Energy substantial amounts for electric service each year. Circle K's continued operation and further expansion of EV refueling stations within Duke Energy's service area is dependent, in part, upon the outcome of this docket. While Circle K offers EV charging in other areas and looks to expand its EV charging services, Circle K has not yet deployed EV charging in the Duke Energy service area.

- c. **RaceTrac.** RaceTrac is a family-owned business that has been serving guests since 1934. Together with its franchise-brand RaceWay, RaceTrac operates over 800 convenience stores and employs over 10,000 team members across its footprint. The company has been proudly serving Floridians for almost half a century. Currently, there are 295 stores (249 company-owned RaceTrac stores and 46 franchise-operated RaceWay stores) in Florida, which are supported by over 4,200 team members. Since 2017, RaceTrac has invested about \$92 million each year in the state and plans to invest approximately \$100 million in 2024. RaceTrac has refueling stations located at the most convenient real estate for travelers, including many locations along alternative fuel corridors. Of its refueling stations, 78 are located within Duke Energy's service area.

Additionally, RaceTrac has one Store Support Center in Duke Energy's Service area, making RaceTrac a large retail customer of Duke Energy, paying Duke Energy substantial amounts for electric service each year. RaceTrac offers EV charging in other areas outside of Duke Energy's service area and looks to expand its EV charging services in the Duke Energy service area.

- d. **Wawa.** Wawa is a privately held, family-owned company that began as an iron foundry in 1803. As of 2023, Wawa was number 20 on Forbes' list of America's largest private companies. Wawa operates more than 1,040 stores and employs over 46,000 team members across its footprint. Approximately 865 of these locations include motor vehicle refueling stations. The company has been proudly serving Floridians since 2012. Currently, there are 280 stores in Florida, which are supported by over 10,000 team members, and Wawa is continuing to actively expand in Florida. Of its Florida locations, Wawa has 79 locations within Duke Energy's service territory, 17 of which have EV charging stations, making Wawa a large retail customer of Duke Energy, paying Duke Energy substantial amounts for electric service each year. Wawa anticipates adding 39 EV refueling stations within Duke Energy's service territory over the next 10 years.

6. **Further Information Regarding Substantial Interests of the Fuel Retailers.** In this docket, the Commission will consider Duke Energy's request to increase rates paid by Duke Energy customers, including each of the Fuel Retailers. Specifically, in its April 2, 2024, Petition for Rate Increase, Duke Energy indicates an intention to seek a base rate increase of "approximately \$593 million in 2025, \$98 million in 2026, and \$129 million 2027 in base rate revenue requirements to become effective the first billing cycle of January 2025, 2026, and 2027,

respectively.” Petition, at 6. Duke Energy’s proposed changes to base rates will have a direct and substantial impact on Duke Energy’s customers, including each of the Fuel Retailers who are customers of Duke Energy. The business of the Fuel Retailers is selling fuel to provide power to vehicles, *see* section 377.707(1), Florida Statutes, and the Fuel Retailers are fuel agnostic given their roles as the primary providers of motor vehicle fuels to the public. With the projected transition of the motor vehicle industry to electricity as a fuel, the Fuel Retailers are currently providing EV charging services at some Florida locations, including some within the Duke Energy service area as noted above, and a substantial number of AACE members, including Fuel Retailers and their respective fuel retail centers throughout the Duke Energy service area. Intervention on this basis alone as customers is demonstrated under Florida law.

7. Next, Duke Energy is proposing to establish an Electric Vehicle Make Ready Infrastructure Program which will be available to Residential and Non-Residential customers alike. *See*, Direct Testimony of Timothy J. Duff, at 5. As proposed, Duke Energy will provide participating customers with revenue credits to defray a portion of the cost to install or upgrade electric vehicle charging infrastructure. Whether this program is ultimately approved – and in what form – will impact the scope and speed at which the Fuel Retailers implement existing plans deploy electric vehicle chargers within Duke Energy’s service territory.

8. As the EV market in Florida continues to develop and grow, it is imperative that there is a robust and affordable electric vehicle charging infrastructure in place to support Floridians and visitors during an evacuation. Fuel Retailers have the footprint, infrastructure, and experience to provide fueling support to motorists during hurricanes or other emergencies. In addition to the proposed Electric Vehicle Make Ready Infrastructure Program, the Fuel Retailers have a substantial interest in ensuring that the rates, terms, and conditions that Duke Energy is proposing to charge third party EV charging fuel providers are such that they can reasonably and

economically offer third party EV charging to the public. On this point, the Florida Legislature has made clear its intent that there be sufficient, reasonably priced fueling locations along evacuation routes. *See* § 252.135(2)(a)1., Fla. Stat.; *see also* § 339.287(1)(e), Fla. Stat. (providing legislative finding that having adequate, reliable charging stations along the State Highway System will also help with evacuations during hurricanes or other disasters).

9. Finally, Duke Energy states that the DeBary Hydrogen project will provide it with “[assistance with future designs and scale-up evaluations, which will help guide DEF’s continued transition to renewable energy.” *See*, Direct Testimony of Reginald D. Anderson, at 9. House Bill 1645, upon approval by the Governor, also has significant and relevant language regarding fuel diversity. The Fuel Retailers have no issue with Duke Energy utilizing this legislation to increase the fuel diversity of its electric generation fleet. However, to the extent Duke Energy intends to use this legislation as a means of expanding its existing green hydrogen program to include the sale of green hydrogen – or any other type of alternative fuel – as a motor vehicle fuel, such efforts would substantially impact the Fuel Retailers as Duke Energy’s monopoly rate payers would be subsidizing the cost of that alternative motor vehicle fuel.

10. Given the status of Circle K, RaceTrac, and Wawa as large retail electric customers of Duke Energy and the potential impacts to each of the Fuel Retailers, including AACE members in the Duke Energy service area, as a result of the rate increase and tariff changes proposed by Duke Energy along with the other issues raised above, each of the Fuel Retailers individually meets the standard for intervention set forth in *Agrico Chemical Company v. Dep’t of Env’tl. Reg.*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The Commission has a long history of granting intervention to customers in rate proceedings. *See, e.g., In re: Petition for rate increase by Gulf Power Company*, Docket No. 130140-EI, Order No. PSC-13-0419-PCO-EI (Sept. 10, 2013) (granting intervention to large retail customer); *In re: Petition for increase in rates by Florida Power &*

Light Company, Docket No. 120015-EI, Order No. PSC-12-0221-PCO-EI (April 26, 2012) (granting intervention to residential customers); *In Re: Petition for Rate Increase by Tampa Electric Company*, Docket No. 080317-EI, Order No. PSC-08-0599-PCO-EI (Sept. 16, 2008) (granting intervention to association representing interests of retail customers). None of the other customers or customer groups that have requested intervention in this docket reflect the same types of business or business interests as the Fuel Retailers, and so they bring a unique and different perspective to this case not reflected by any other intervenor or petitioner for intervention.

11. **Association Standing.** The subject matter of this proceeding is well within AACE's established scope of interest and activity. AACE routinely appears on behalf of its members' interest in a variety of legislative, regulatory, and judicial proceedings. AACE's mission is to educate the public and advocate for consumer-focused low-carbon transportation energy policies. This mission includes the development and expansion of EV charging station infrastructure and related technology to communities throughout the United States in order to promote clean energy and a reduction in greenhouse gas emissions. While AACE has not previously participated in a proceeding before this Commission, AACE has been granted intervention in proceedings in numerous other states, including Colorado, Georgia, Louisiana, Minnesota, South Carolina, and Texas. The interests of the many members of AACE who are Duke Energy customers will be determined by the Commission's decision in this case.

12. Under Florida law, to establish standing as an association representing its members' substantial interests, under *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982), an association such as AACE must demonstrate three things: (A) that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency's decisions; (B) that the intervention by the association is

within the association's general scope of interest and activity; and (C) that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

13. AACE satisfies all of these associational standing requirements.

- a. A substantial number of AACE's members are located in Duke Energy's service area and receive electric service from Duke Energy pursuant to Commission-approved rates that are at issue in this proceeding. In addition, AACE members have a direct interest in EV-related programs implemented by Duke Energy.
- b. AACE exists to represent its members' interest in various venues, including matters before the Florida Public Service Commission, as demonstrated by AACE's participation in the previously noted regulatory proceedings in other states, which specifically include other state utility regulatory commissions.
- c. Finally, the relief requested by AACE is of the type appropriate for it to receive on behalf of its members pursuant to Rule 28-106.205(1), Florida Administrative Code. AACE seeks to intervene as a party of record with full rights to participate in all of the proceedings in this docket, joining three of its members who are also seeking intervention. AACE members are electric customers who will be affected by the outcome of this proceeding. AACE members purchase electricity from Duke Energy pursuant to various rate schedules that are at issue in this proceeding. AACE's participation is appropriate to ensure that the rates charged to AACE's members for electric service are fair, just, and reasonable. While some of the larger AACE members with business in the Duke Energy service area are also individually intervening in this docket, AACE can support those individual companies through this

concurrent or joint representation, and AACE can also provide a larger view and perspective to the Commission on behalf of those additional fuel retailers who are also Duke Energy customers. While AACE, Circle K, RaceTrac, and Wawa shall speak with a single voice in this case, and take a single position on issues, those issues and single positions shall be reflective of all of the AACE members operating in the Duke Energy service area. To that end, the Fuel Retailers intend to conduct discovery, cross examine witnesses, raise issues of material fact and law, and take positions based upon what Duke Energy seeks and how the relief requested in this docket substantially affects AACE's members, all of which are the types of matters that this proceeding is designed to protect.

14. **Notice of Proceeding.** Each of the Fuel Retailers received notice of this docket informally through the monitoring of Commission dockets.

15. **Statement of Position.** Duke Energy must meet its burden of proof in this matter. The Fuel Retailers intend to conduct discovery and reserve the right to modify its positions based on information obtained during discovery or otherwise.

16. **Disputed Issues of Material Fact.** Fuel Retailers expect that the disputed issues of material fact will continue to be identified and refined in the course of these proceedings. Based upon the Fuel Retailers' review of the proceedings thus far, the disputed issues of material fact currently include, but are not limited to:

- a. Whether the increased base rates proposed by Duke Energy are supported by competent substantial evidence of record.
- b. Whether the increased base rates proposed by Duke Energy are fair, just, and reasonable.

- c. Whether Duke Energy's proposed return on equity and capitalization structure are fair, just, and reasonable.
- d. Whether the proposed tariffs, including those related to EV chargers, are appropriate, and not unfairly discriminatory.
- e. Whether the projected test year(s) are more representative than an historic test year.

The Fuel Retailers reserve the right to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this docket.

17. **Statement of Ultimate Facts Alleged and at Issue.** The alleged ultimate facts include, but are not limited to, the following:

- a. Whether Duke Energy has met its burden to prove that its proposed rates and charges, and its implementing tariffs, are fair, just, and reasonable.
- b. Whether Duke Energy has met its burden to prove that it is entitled to any rate increases.
- c. Whether the projected test year(s) are more representative than an historic test year.

18. **Rules and Statutes Justifying Relief.** The rules and statutes that entitle each of the Fuel Retailers to intervene and participate in this case include but are not limited to Sections 120.569, 120.57(1), 366.04, 366.041, 366.05, 366.06, Florida Statutes, House Bill 1645 if it takes effect, and Rules 28-106.201 and 28-106.205, Florida Administrative Code.

19. **Relief Requested.** The Fuel Retailers request that each be permitted to intervene as a full party in this docket. The Fuel Retailers intend to offer a uniform position and present a single case to the Commission.

20. **Statement Required by Rule 28-106.204(3).** Counsel for the Fuel Retailers has conferred with counsel for all the Parties of Record and is authorized to represent that they take no position on this intervention. While Duke Energy takes no position on this intervention, it reserves the right to file a full response to the petition.

WHEREFORE, Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc. request that the Commission enter an order allowing each company to intervene and participate as a full party in the above-captioned docket.

Respectfully submitted,

/s/ Frederick L. Aschauer, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition to Intervene has been furnished by electronic mail this 24th day of April 2024 to the following:

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