

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by
Duke Energy Florida, LLC

Docket No. 20240025-EI

Filed: May 1, 2024

DUKE ENERGY FLORIDA’S RESPONSE TO AACE’S PETITION FOR INTERVENTION

Duke Energy Florida, LLC (“DEF”), by and through undersigned counsel and pursuant to Florida Administrative Code Rule 28-106.204, hereby responds to the Petition to Intervene filed by the Americans for Affordable Clean Energy (“AACE”), Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc., and states as follows:

1. On January 31, 2024, DEF filed its test year notification letter noticing its intent to file a petition seeking base rate relief. Thereafter, on April 2, 2024, DEF filed its formal petition seeking approval to increase its base rates and other relief.

2. Since the filing of the petition, the Office of Public Counsel provided notice of its intervention, and Florida Rising, the League of United Latin American Citizens of Florida (LULAC), White Springs Agricultural Chemicals, Inc. (d/b/a PCS Phosphate), Nucor Steel Florida, Inc., the Florida Industrial Power Users Group (FIPUG), the Sierra Club, the Florida Retail Federation (FRF), and the Southern Alliance for Clean Energy (SACE) have also been granted or sought intervention in this docket.

3. Subsequently, on April 25, 2024, AACE, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc., jointly petitioned to intervene in this docket (the “Joint Petition”).

Fuel Retailers

4. To establish that they are substantially affected parties with standing to intervene in this docket, Circle K Stores, RaceTrac, and Wawa (the “Fuel Retailers”) allege that each are DEF

customers with an interest in the electric rates that will be established in this proceeding. *See* Jt. Petition, ¶ (5)(b-d). DEF has verified that the Fuel Retailers are retail customers, and therefore DEF concedes they have the substantial interest necessary to support standing to intervene. *See Agrico Chemical Co. v. Dep't of Envntl. Reg'n*, 406 So. 2d 478 (Fla. 2d DCA 1981) (“before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his 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.”).

AACE

5. AACE, however, has not alleged that it is a DEF retail customer with substantial interest in its own right, but rather asserts it qualifies for Associational Standing to represent the interests of its members under the test set out in *Florida Homebuilders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982). To establish associational standing, a petitioner must show that a substantial number of its members, although not necessarily a majority, are “substantially affected” by the agency’s decision. Further, the subject matter of the proceeding must be within the association’s general scope of interest and activity, and the relief requested must be of the type appropriate for a trade association to receive on behalf of its members. *See id.* at 353-54.

6. Based on the allegations in the Joint Petition, it is unclear if AACE will be able to meet the test provided in *Florida Homebuilders*. For example, AACE alleges it has a substantial number of members in DEF’s service area receiving service from DEF but does not provide the percentage of its membership it considers “substantial” and does not identify those members such that they can be independently verified (other than the Fuel Retailers intervening in their own right). *See* Jt. Petition, ¶ 13.a. Thus, it is unclear if AACE meets the first prong of *Florida Homebuilders*.

7. Likewise, it is unclear if AACE meets the second prong of the test. AACE asserts it “exists to represent its members in various venues” including the Commission and other regulatory bodies, point to its alleged previous representation of its members in front of other regulatory bodies. *See* Jt. Petition, ¶ 13.b. That may very well be true, but to qualify for associational standing, it must prove that the “subject matter” of this proceeding, which is DEF’s request for increase in base rates, is within its general scope of interest. *See Fla. Homebuilders*, 412 So. 2d at 354. Finally, to the extent AACE asserts that it seeks intervention to advance public policy positions related to EV charging throughout the state to advance its members interests, such arguments go beyond the scope of this proceeding (as discussed in more detail below), and therefore cannot support standing.

8. For these reasons, DEF reserves its right to test AACE’s alleged through discovery and object if AACE is unable prove its standing allegations.

Limitation on Standing Rights

9. However, while DEF concedes the Fuel Retailers’ standing, and subject to the foregoing discussion regarding AACE’s associational standing to intervene, the joint petitioners’ arguments related to market competition and potential, but not certain, detrimental impacts to their business interests are beyond the scope of this proceeding. *See* Order No. PSC-2017-0397-PCO-EI (a proposed intervenor’s “alleged injury to its economic interests and the free market are not what the governing statutes of this proceeding were meant to protect”).

10. For this reason, DEF requests that the Commission strictly limit the Joint Petitioners’ intervention to the Fuel Retailers’ (and potentially other AACE members receiving service from DEF) interests as DEF customers and to the purpose of this proceeding, establishing DEF’s base rates in the projected test years, and preclude the Joint Petitioners from raising arguments based on its interests as a market competitor or other general economic arguments – as those interests go beyond the purpose of this proceeding. *See* Order No. PSC-2021-0151-PCE-EI (granting intervention to a retail customer,

but finding that broad, economic competition-based arguments for standing do not satisfy the second prong of *Agrico* because the alleged injury is not of a type or nature the proceeding was intended to protect against); Order No. PSC-2016-0550-PCO-EI (granting intervention, but limiting the issues “to those appropriate to the scope of an electric rate case proceeding”); Order No. PSC-2009-0280-PCO-EI (granting intervention to an individual customer and stating that “intervention should not be construed to permit him to raise arguments outside the scope of the issues the Commission determines to address in this rate proceeding,” specifically including “issues related to his competitive economic or business interests”).

11. The Joint Petitioners assert that whether DEF’s EV Make Ready program is approved – and in what form – will impact the scope and speed of implementation of plans to deploy EV charging stations within DEF’s service territory. *See* Jt. Petition, ¶ 7. However, this proceeding is not designed to protect these potential intervenor parties’ generalized interests in the EV charging market and therefore, under *Agrico*, the Joint Petitioners should not be permitted to inject those issues into this proceeding.

12. Similarly, the Joint Petitioners raise hypothetical concerns that DEF could begin offering green hydrogen, or any other alternative fuel, for sale as motor vehicle fuel to the detriment of Joint Petitioners’ economic interests. *See* Jt. Petition, ¶ 9. This alleged potential injury is too “abstract and speculative” to support standing under the first prong of the *Agrico* test. *See* Order No. PSC-2021-0126-PCO-EI, p. 4 (denying standing based on speculative nature of alleged harm for failing to meet the first prong of *Agrico*) (citing *Village Park Mobile Home Assn., Inc. v. State Dept. of Bus. Regulation*, 506 So. 2d 426, 433 (Fla. 1st DCA 1987) (“petitioner must allege that [it] has sustained or is immediately in danger of sustaining some direct injury as result of the challenged official conduct.”)).

13. Moreover, this proceeding was not designed to protect the Joint Petitioners' economic interests, and thus concerns about "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", *see* Jt. Petition, ¶8, or DEF potentially offering green hydrogen or any other alternative motor vehicle fuel for sale to the public and competing with the Joint Petitioners, *see id.* at ¶9, cannot support standing under the second prong of the *Agrico* test.

14. Because the concerns discussed above cannot support standing to intervene in this proceeding, DEF requests the Commission limit Joint Petitioners' participation to the interests and arguments underpinning their standing to participate, i.e., the Fuel Retailers interests as retail customers of DEF and AACE's representation of its members' substantial interests related to the types of issues this proceeding is designed to protect but no additional, tertiary issues beyond the scope of these proceedings. *See* Order No. PSC-2021-0151-PCO-EI, p. 4 ("The decision to grant [petitioner] intervention as a commercial retail customer should not be construed to permit the Company to raise arguments concerning its business interests or interests as a market competitor. [Party's] Petition to Intervene in its capacity as commercial retail customer shall be granted. [Petitioner's] allegations based upon broad concepts of competitive business interests are beyond the scope of this proceeding, and intervention on that basis is denied.").

Respectfully submitted this 1st day of May, 2024.

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 1st day of May, 2024, to the following:

/s/ Dianne M. Triplett

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