

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Duke)
Energy Florida, LLC.) Docket No. 20240025-EI
) Filed: May 8, 2024

**RESPONSE TO DUKE ENERGY’S MOTION
TO LIMIT FUEL RETAILERS’ INTERVENTION**

Americans for Affordable Clean Energy, Inc. (“AACE”), Circle K Stores, Inc. (“Circle K”), RaceTrac Inc. (“RaceTrac”), and Wawa, Inc. (“Wawa”) (hereinafter, collectively, “Fuel Retailers”), pursuant Rule 28-106.204, Florida Administrative Code, hereby respond to the Response (and Motion) to AACE’s Petition for Intervention (“Duke’s Response and Motion”) filed by Duke Energy Florida, LLC (“Duke”), as such constitutes a request for affirmative relief and action by the Commission against the interests of the Fuel Retailers. Indeed, Duke’s Response and Motion should have been styled as a motion, and herein the Fuel Retailers respond only to such requested relief, and in support thereof state as follows:

1. On May 1, 2024, Duke filed Duke’s Response and Motion. While the uniform rules do not permit replies without leave of the presiding officer, a portion of Duke’s Response and Motion seeks affirmative relief. That portion seeking affirmative relief is therefore a motion improperly denoted as a Response, and the Fuel Retailers are entitled to respond to that portion of Duke’s Response and Motion. Fla. Admin. Code. R. 28-106.204(1).

2. Specifically, Duke’s Response and Motion states:

10. For this reason, [Duke] *requests* that the Commission strictly limit the Joint Petitioners’ intervention to the Fuel Retailers’ (and potentially other AACE members receiving service from [Duke]) interests as [Duke] 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. (emphasis supplied).

...

14. Because the concerns discussed above cannot support standing to intervene in this proceeding, [Duke] *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 [Duke] 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. (emphasis supplied).

3. Courts, or in this case the Commission, must look to the substance of a pleading rather than the label a moving party has assigned to it. *Indus. Affiliates, Ltd. v. Testa*, 770 So.2d 202, 204 n. 1 (Fla. 3d DCA 2000); *see also Fire & Cas. Ins. Co. of Conn. v. Sealey*, 810 So.2d 988, 992 (Fla. 1st DCA 2002) ("We agree that the true nature of a motion must be determined by its content and not by the label the moving party has used to describe it.").

4. As Duke is well aware¹, the Uniform Rules require "[a]ll requests for relief shall be by motion." Fla. Admin. Code. R. 28-106.204(1). Moreover, the Uniform Rules provides that "[a]ll motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion." Fla. Admin. Code. R. 28-106.204(3).

5. Duke neither conferred with the Fuel Retailers regarding this motion nor timely served it on the Fuel Retailers. Therefore, the Commission must deny the requested relief on these procedural grounds.

6. Moving to the substance of the motion included in Duke's Response and Motion. Duke makes, essentially, two arguments in support of its sought after relief.

¹ Document No. 00970-2024, p.2, PSC Docket No. 20240024-EI, *In re: Petition for rate increase by Duke Energy Florida, LLC*

7. First, Duke argues that it is unclear, based on the Petition, whether AACE will be able to meet both prongs of the associational standing test established in *Florida Homebuilders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982). In this regard, “[Duke] reserves the right to test AACE’s alleged [*sic*²] through discovery and object if AACE is unable to prove its standing allegations.”

8. Second, Duke argues that the Fuel Retailers raise “hypothetical concerns that [Duke] could begin offering green hydrogen, or any other alternative fuel, for sale as motor vehicle fuel to the detriment of Joint Petitioners’ economic interests” and that this “potential injury is too ‘abstract and speculative’ to support standing[.]”

9. These concerns only exist because of statements made by Duke. Specifically, that its DeBary Hydrogen project will provide it with “[a]ssistance with *future designs and scale-up evaluations*, which will help guide [Duke’s] continued transition to renewable energy.” (emphasis supplied). *See*, Direct Testimony of Reginald D. Anderson, at 9.

10. The Fuel Retailers’ concerns that Duke would utilize its monopoly power to establish a retail alternative fuel infrastructure – like it has done with its Park & Plug EV Charging pilot program – is neither abstract nor speculative. It is a palpable concern of sufficient immediacy for the Fuel Retailers and should concern anyone who supports a competitive, free market.

11. Likewise, Duke argues that the Public Service Commission proceeding is not designed to protect the Fuel Retailers’ “generalized” interests in the EV charging market. This argument ignores that Duke has explicitly made the EV charging market part of this proceeding through the inclusion of its EV Make Ready program. *See*, Direct Testimony of Timothy J. Duff, at 5.

² The omitted word is assumed to be “standing,” for purposes of this response.

12. Simply stated, these “hypothetical” concerns are anything but hypothetical – Duke has expressly inserted both the EV charging market and the potential use of green hydrogen, or any other alternative fuel, into this matter through Duke’s direct testimony. Either Duke intends to raise these issues as part of its attempts to change its rate structure, or Duke should make clear that these issues are NOT at issue here and withdraw the testimony related to such issues.

13. Notably unaddressed by Duke is the import of House Bill 1645 to this proceeding. This legislation will be effective July 1, 2024, assuming it is not vetoed by the Governor, and specifically authorizes the Public Service Commission to approve voluntary EV charging programs – like those proposed by Duke – provided that the general body of ratepayers will not pay to support the recovery of those EV charging investments. Indeed, once this legislation becomes law, it provides a statutory basis supporting the Fuel Retailer’s intervention in order to ensure that the monopoly ratepayers are not subsidizing Duke to the extent it seeks to become a retail EV charging supply competitor of the Fuel Retailers.

14. Finally, any rate structure to be addressed in this proceeding that establishes how Duke might address the inclusion of the infrastructure, and other aspects, of Duke’s attempts to design, construct or otherwise stand up an EV charging program or the use of green hydrogen, and whether Duke has the authority to do so, are issues that are *squarely* within the scope of this proceeding and which this proceeding is designed to protect. The substantial interests each of Circle K, RaceTrac, Wawa and each of the AACE members operating in Duke’s territory are affected as Duke ratepayers, to the extent Duke is seeking to rate base or otherwise recover from its monopoly ratepayers the costs of these initiatives.

WHEREFORE, Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc. request that the Commission enter an order denying Duke’s Response and Motion.

Respectfully submitted this 8th day of May, 2024.

/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 8th day of May 2024 to the following:

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