

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for Rate Increase by Duke )  
Energy Florida, LLC. ) Docket No. 20240025-EI  
\_\_\_\_\_ ) Filed: June 11, 2024

**UNOPPOSED MOTION TO ACCEPT TESTIMONY OF DAVID FIALKOV**

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, respectfully request the Florida Public Service Commission (“PSC”) accept the testimony of David Fialkov filed on June 11, 2024. In support the Fuel Retailers state as follows:

1. Pursuant to the Order Establishing Procedure, Intervenors’ Testimony and Exhibits were due to be filed with the Office of Commission Clerk by 5:00 pm on June 11, 2024.

2. While the Order Establishing Procedure, Section IV, Prefiled Testimony and Exhibits, notes that “[f]ailure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements *may bar* admission of such exhibits and testimony” (emphasis supplied), such language is permissive and recognizes the authority of the Commission to accept the Fuel Retailers’ prefiled testimony after the 5:00 pm deadline on June 11, 2024.

3. On June 11, 2024, the Fuel Retailers filed the direct testimony of David Fialkov at approximately 7:02 p.m. due to unforeseen circumstances.

4. Understandably, the PSC can impose and enforce deadlines to ensure the expedient resolution of cases before them. Noncompliance with the PSC’s schedule *may stymy* this effort and could be unfair to the parties. That is simply not the case here.

5. While Mr. Fialkov’s testimony was filed after the 5:00 p.m. deadline, there is nothing new in his testimony that the parties are not already aware of or that has not been identified

in the Fuel Retailers' petition to intervene. As such, none of the parties are prejudiced by accepting his testimony. Moreover, Florida public policy favors "deciding a case on its merits rather than on a technicality." *J.J.K. Int'l, Inc. v. Shivbaran*, 985 So. 2d 66, 69 (Fla. 4th DCA 2008).

6. The current situation is akin to the Fourth District Court of Appeal's practice of treating non-jurisdictional filings that were filed by 9:00 am as having been filed the previous day. *See Capone v. Florida Bd. of Regents*, 774 So. 2d 825 (Fla. 4th DCA 2000). The late filing of Mr. Fialkov's testimony is a non-jurisdictional filing that *Capone* recognized court's were permitted to accept after procedural deadlines.

7. For the aforementioned reasons, the Fuel Retailers represent that there is good cause to accept<sup>1</sup> the testimony of David Fialkov.

8. Counsel for the Fuel Retailers conferred with counsel for all parties of record and can represent: Duke Energy Florida, LLC, the Florida Retail Federation, White Springs Agricultural Chemicals, Inc., the Southern Alliance for Clean Energy, Nucor Steel Florida, Inc and can represent that they do not object to this motion. The Office of Public Counsel, Sierra Club, Florida Rising, LULAC and the PSC Staff take no position non this motion. EVgo Services, LLC supports the motion.

**WHEREFORE**, Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc. request that the Commission accept the testimony of David Fialkov as being filed as a matter of record in this proceeding.

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<sup>1</sup> To be clear, the Fuel Retailers only request via the instant motion is the acceptance of Mr. Fialkov's testimony as being filed as a matter of record in this proceeding. In no way does the instant motion speak to the substance of the testimony.

Respectfully submitted this 12th day of June, 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 12th day of June 2024 to the following:

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