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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy
Florida, LLC.

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0184-PCO-EI
ISSUED: June 4, 2024

ORDER GRANTING PETITION TO INTERVENE
BY AMERICANS FOR AFFORDABLE CLEAN
ENERGY, INC., CIRCLE K STORES, INC.,
RACETRAC, INC., AND WAWA, INC.

Duke Energy Florida, LLC (Duke or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Petition for Intervention

On April 24, 2024, Americans for Affordable Clean Energy, Inc. (AACE), Circle K Stores, Inc., (Circle K), RaceTrac, Inc. (RaceTrac) and Wawa, Inc. (Wawa) filed a Petition to Intervene in this proceeding. The Petition makes the following allegations as to each petitioning intervenor:

1. AACE

AACE is a nonprofit association of fuel retailers. AACE seeks intervention on behalf of “its five fuel retailer members in Florida,” who collectively own and operate over 1,500 convenience stores, public travel facilities, and truck stops in the state. These locations offer fuel, goods, services, and other amenities. All members of AACE for whom intervention is sought are energy customers (ratepayers) of Duke, and rely on electricity to offer fuel and other services. Electric vehicle (EV) charging stations have been or may be deployed at some of the locations owned and operated by AACE members. The membership of AACE includes Circle K, RaceTrac, and Wawa.

2. Circle K

Circle K has over 60 years experience in the convenience retailing industry, and is currently the global brand of Alimentation Couche-Tard, Inc., which operates more than 16,700 stores in 29 countries and territories. Circle K operates approximately 150 convenience stores in

Duke's territory, and pays the Utility substantial amounts for electricity. Circle K operates EV chargers outside of Duke's territory, but "looks to expand its EV charging services."

3. RaceTrac

RaceTrac has been in business for 90 years and, together with affiliate RaceWay, currently operates over 800 stores over its entire footprint. RaceTrac has 78 refueling stations and one Store Support Center in Duke's territory. RaceTrac pays the Utility substantial amounts for electricity. RaceTrac offers EV chargers outside of Duke's territory, and looks to expand its EV charging services.

4. Wawa

Wawa currently operates 1,020 convenience stores, approximately 865 of which have motor vehicle refueling stations. Wawa has 79 locations in Duke's territory, 17 of which have EV charging stations, and plans to add 39 EV charging stations in the next 10 years. Wawa pays the Utility substantial amounts for electricity, and affordable and reliable electrical service is necessary for its operations.

DEF Response to Petition to Intervene

In its Response to the Petition, Duke states that it has verified that Circle K, RaceTrac, and Wawa (collectively "Fuel Retailers") are retail customers of the Utility. Duke raises no objection to the Fuel Retailers intervening as ratepayers of the Utility.

As to AACE, Duke raises no objection to the legal sufficiency of the allegations relating to standing. However, Duke questions whether AACE will be able to factually support the allegations and prove standing. Duke notes that AACE alleges that a substantial number of its members are ratepayers of the Utility, but does not provide a number or percentage. Duke also questions whether the general allegations made by AACE regarding its associational purpose and the relief it seeks for its members can ultimately be supported by facts that would allow the Commission to grant standing and afford relief to AACE.

Duke also argues that limitations should be placed on the "standing rights" of AACE and the Fuel Retailers. Duke avers that the intervenors' arguments regarding market competition and business interests and potential impacts on the EV market are beyond the scope of this proceeding. Duke also argues that concerns regarding the impact of green hydrogen on future fuel markets are too abstract and speculative to support standing.

The Fuel Retailers and AACE filed a "Response to Duke Energy's Motion to Limit Fuel Retailers' Intervention," and therein argued that the portion of Duke's Response requesting a limitation on standing was itself a motion and should be denied.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Duke Energy
Florida, LLC.

DOCKET NO. 20240025-EI
ORDER NO. PSC-2024-0185-PCO-EI
ISSUED: June 4, 2024

ORDER GRANTING PETITION TO INTERVENE
BY EVGO SERVICES, LLC

Duke Energy Florida, LLC (Duke or Utility) filed its Petition for Rate Increase, minimum filing requirements (MFRs), and testimony on April 2, 2024. Duke filed its MFRs based on projected test years from January 1 to December 31, 2025; January 1 to December 31, 2026; and January 1 to December 31, 2027. By Order No. PSC-2024-0092-PCO-EI, issued April 11, 2024, an administrative hearing has been scheduled for these matters for August 12 – 16, 2024. August 19 – 23, 2024, have also been reserved for the continuation and conclusion of this hearing, if necessary.

Petition for Intervention

By Petition dated May 14, 2024, EVgo Services, LLC (EVgo) requested permission to intervene in this proceeding. EVgo states that it is a leading public fast charger provider across the country. EVgo represents that over 70 of its approximately 1,000 fast charging stations are in Florida. EVgo states that it is an electric customer of Duke, taking service under the Utility's General Service Rates. EVgo further avers that it may participate or seek to participate in several of Duke's proposed electric vehicle (EV) programs.

No responses in support of or opposition to the Petition have been filed, and the time for doing so has expired.

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*, 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).

EVgo asserts that its substantial interests “include its interests [1] as a commercial customer of DEF, its interest [2] as an electric vehicle service provider (EVSP) operating and expanding its charging network in DEF’s service territory, and its interests [3] as a potential participant in DEF’s EV charging programs.”

Analysis & Ruling

EVgo alleges that it is an energy customer of the Utility, and that its substantial interests as a ratepayer will or may be affected by Duke’s request for a rate increase. Duke raised no objection to the Petition. Accordingly, the Petition shall be granted.

EVgo forwards additional arguments in support of its request to intervene. However, the determination in this Order that the Petition shall be granted is based solely upon the allegations that EVgo is a Duke ratepayer. Intervention is not being granted based upon the allegations that EVgo may expand its charging network and is a “potential participant” in Duke’s EV charging programs. These claims do not meet the second prong of *Agrico*, as they are based on speculation regarding possible future actions. Additionally, these arguments raised issues that are beyond the scope of a base rate proceeding.¹ The impact of EV charger programs on base rates and Duke ratepayers may or may not present appropriate issues for consideration in this docket. If necessary, this determination will be made by the Prehearing Officer in the Prehearing Order.

Based on the above representations, it is

ORDERED by Commissioner Gabriella Passidomo, as Prehearing Officer, that the Petition to Intervene filed by EVgo Services, LLC, is hereby granted as set forth in the body of this Order. It is further

ORDERED that EVgo Services, LLC, takes the case as it finds it. It is further

¹ Order No. PSC-2021-01510PCO-EI, issued April 22, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general based rate increases, by Duke Energy Florida, LLC*. (“broad economic competition-based arguments for standing also do not satisfy the second prong of the *Agrico* test, because the injury . . . is not of a type or nature that this proceeding is designed to protect”).