

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 20240025-EI

Submitted for filing: July 1, 2024

**DUKE ENERGY FLORIDA’S RESPONSE IN OPPOSITION TO FLORIDA SOLAR
ENERGY INDUSTRY ASSOCIATION’S PETITION TO INTERVENE**

Duke Energy Florida, LLC (“DEF”), by and through undersigned counsel and pursuant to Fla. Admin. Code Rule 28-106.204, hereby responds in opposition to the Petition to Intervene filed by Florida Solar Energy Industry Association (“FLASEIA”) 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 (“OPC”) 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. (“Nucor”); the Florida Industrial Power Users Group (“FIPUG”); the Sierra Club; the Florida Retail Federation (“FRF”); Southern Alliance for Clean Energy; Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., Wawa, Inc. (collectively, the “Fuel Retailers”); and EVgo Services, LLC (“EVgo”) have also sought and/or been granted intervention in this docket.

3. On June 11, 2024, Commission Staff, OPC, Florida Rising/LULAC, PCS Phosphate/Nucor, FIPUG, the Sierra Club, FRF, the Fuel Retailers, and EVgo filed testimony and exhibits.

4. Subsequently, on June 24, 2024, FLASEIA filed its Petition to Intervene in this docket.

5. DEF respectfully requests that the Commission deny FLASEIA's Petition to Intervene on the grounds that FLASEIA cannot demonstrate that it is a substantially affected party with standing to intervene in this docket.

6. FLASEIA has not alleged that it is a 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.

7. Based on the allegations in the Petition, FLASEIA cannot meet the first prong of the *Florida Homebuilders* test. FLASEIA alleges that "74 [out of 186] FLASEIA members have a home office address in a county served by DEF" but neglects to allege that *any* of its members are *actually* served by DEF. *See* Petition, ¶ 5. Stated differently, FLASEIA alleges that, *at most*, 39.78% of its current membership *might* be served by DEF. Claiming 39.78% as a "substantial number" of its members is tenuous, at best, particularly in light of the speculative nature of whether they are actually customers.

8. In any event, FLASEIA's stated purpose, as well as the Petition itself, suggest that the primary reason FLASEIA is seeking to intervene is not to advocate on behalf of FLASEIA

members who may happen to be customers, but rather to “protect and promote the interests of the solar industry in Florida...” and “advance solar-friendly policies in Florida.”¹ Several statements in its Petition corroborate that FLASEIA intends to advocate for rates that encourage DEF customers to install solar and thereby patronize businesses that are FLASEIA’s members. For example, in its Petition, FLASEIA asserts that its members “are engaged in the sale, development, and construction of solar installations including, notably, behind-the-meter installations which said businesses will be directly impacted by the determination of the retail rate of electricity.” *See* Petition, ¶ 8. Similarly, FLASEIA alleges that its “participation in this docket is appropriate to ensure that the rates charged to ratepayers, who are also customers of FLASEIA’s membership base,” (i.e., FLASEIA members’ customers’ rates, not FLASEIA members’ rates) “are fair, just, and reasonable.” *See id.* at ¶ 14. FLASEIA also notes that its membership relies on “a friendly business environment for distributed energy companies whose business model relies on local utility rates.” *See id.* at ¶ 10. Such arguments are beyond the scope of this proceeding. The statute does not direct the Commission – or even provide it with the discretion – to consider business interests in the context of a ratemaking proceeding filed under chapter 366, Florida Statutes. As such, FLASEIA cannot show that a substantial number of its members would be substantially affected by the agency’s decision as contemplated by *Florida Homebuilders*.

7. It is equally clear that FLASEIA fails to meet the second prong of the test. FLASEIA asserts it “represents and advocates on behalf of its member solar photovoltaic, solar thermal, and energy storage system contractors, installers, manufacturers, distributors, engineers, designers, consultants and more” including before the Commission and other regulatory bodies.

¹ *See* FLORIDA SOLAR ENERGY INDUSTRIES ASSOCIATION, <https://www.flaseia.org> (last visited June 25, 2024).

See Petition, ¶ 4. 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. FLASEIA members are interested in “contributing to the long-term growth and profitability of the solar industry” – this is beyond the scope of this proceeding and therefore cannot support standing.² While DEF acknowledges that FLASEIA has been granted the opportunity to intervene in prior proceedings before this Commission, the docket referenced as a prior intervention, Docket No. 110002-EG, addressed the energy conservation cost recovery clause, and in particular, solar incentives for programs included in this clause, a wholly different proceeding considering vastly different issues, and offers no substantive support or precedent for intervening in the present docket.

8. In sum, while FLASEIA throws in a handful of allegations that some of its members might be customers, given FLASEIA’s stated purpose, DEF believes that FLASEIA’s participation in this proceeding would be for the purpose of advocating for policies and rates that benefit its members in their capacity as solar businesses not as DEF customers. Moreover, the Petition fails, on its face, to meet the *Florida Homebuilders* standing test. As such, DEF objects to FLASEIA’s petition to intervene on the grounds it fails to meet the Florida legal standard for intervention in this proceeding.

² See FLORIDA SOLAR ENERGY INDUSTRIES ASSOCIATION, <https://www.flaseia.org/about-us/> (last visited June 25, 2024).

WHEREFORE, for the foregoing reasons, DEF respectfully requests that the Commission deny FLASEIA's Petition to Intervene for lack of standing.

Respectfully submitted this 1st day of July, 2024.

/s/ Dianne M. Triplett

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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 July, 2024, to the following:

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