

In re: Petition by Florida Power & Light
Company for Approval of FPL SolarTogether
Program and Tariff

Docket No. 20190061

Filed: June 21, 2019

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO VOTE SOLAR'S
MOTION TO INTERVENE AND MOTION FOR ADMINISTRATIVE HEARING**

Florida Power & Light Company ("FPL") hereby responds to Vote Solar's Motion To Intervene and Motion for Administrative Hearing. As described below, Vote Solar's motions are premature and should therefore be denied. In support, FPL states:

1. On March 13, 2019, FPL filed its Petition for Approval of FPL SolarTogether Tariff and Program. On April 22, 2019, the Florida Public Service Commission ("Commission") entered an order suspending the tariff in order to allow staff sufficient time to gather all pertinent information in order to present this Commission with an informed recommendation on the tariff proposal. Order No. 2019-0143-PCO-EI.

2. On June 13, 2019, Vote Solar filed a Motion To Intervene and a Motion for Administrative Hearing on FPL SolarTogether Program and Tariff. FPL objected to the motions and reserved the right to respond after it received them.

3. FPL now has had an opportunity to review Vote Solar's motions and maintains that they should be denied.

Vote Solar's Motion To Intervene is Premature

4. Vote Solar's Motion To Intervene should be denied as premature. This docket is not on a hearing track at this time. Accordingly, the rights Vote Solar would have pursuant to Sections 120.56 and 120.57, Florida Statutes, including the right to petition to intervene and the right to request an administrative hearing, have not yet been triggered. *See* 25-22.029, F.A.C. (the provisions of Section 120.569 and 120.57, F.S., become applicable following the

Commission's vote at an agenda conference and issuance of written notice of proposed agency action).

5. The Commission addressed and declined a similar request in Order No. PSC-12-0139-PCO-WS, *In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.*, Docket No. 110264-WS, issued March 26, 2012 ("*Labrador*"). In that case, a customer group filed a motion to intervene in a proceeding where a utility proposed a new tariff. The utility objected on the grounds that intervention is premature in the proposed agency action ("PAA") portion of a tariff approval proceeding. The Prehearing Officer denied the motion to intervene, stating that there is potential for considerable administrative inefficiency if interested persons are granted formal party status during the PAA process, which would thwart the purpose of providing an inexpensive and expedient proposed determination. The order further stated that there is no need for formal intervention because all interested persons have the ability to participate in the PAA process and may intervene if the matter goes to hearing.

6. The same is true here. Vote Solar has identified itself as an interested person in this docket. Indeed, it has participated in two informal meetings noticed by Staff at which interested persons were permitted to participate and gain information. Vote Solar will have the opportunity to demonstrate standing under the law to pursue a protest or intervention if they take issue with the Commission's PAA Order. As in *Labrador*, allowing intervention at this point would frustrate the expedient process facilitated by the PAA track. Given that the PAA portion of the case will be concluded soon based on the currently scheduled July 25, 2019 Staff Recommendation, a point of entry shortly will be available. There is no point in derailing the current process.

7. Vote Solar's reliance on a 1983 Commission order granting intervention is misguided and ignores the rules that govern proceedings before this Commission. *See* Vote Solar Motion To Intervene at p. 3 and n.2, citing Order No. 12736, *In Re: Application of ATT Communications of the Southern States, Inc. for Certificate of Public Convenience and Necessity*, Docket No. 830489-TI (Dec. 1983) ("*ATT Order*") The *ATT Order* quoted by Vote Solar was based on the version of the intervention rule (Rule 25-22.39, F.A.C.) that existed in 1983, the time of the decision.¹ Contrary to Vote Solar's representation, the current version of the intervention rule is materially different. Rule 28-106.205, F.A.C., which currently governs intervention, provides that any petition to intervene must include "a statement as to whether the intervenor supports or opposes **the preliminary agency action.**" (Emphasis added). Thus, unlike the version that governed at the time of the *ATT Order*, the current rule establishes that preliminary agency action is a prerequisite to intervention.

8. Further, in 2015, the Commission indicated that entities other than OPC have no discovery rights during the PAA process. *In re: Petition for declaratory statement regarding discovery in dockets or proceedings affecting rates or cost of service processed with the Commission's proposed agency action procedure*, Order No. PSC-15-0381-DS-PU, Docket No. 140107-PU, issued September 14, 2015 ("We hereby . . . declare that OPC has the authority under Section 350.0611(1), F.S., to utilize discovery pursuant to Fla. R. Civ. Pro. 1.280-1.390

¹ The full 1983 version of Rule 25-22.39, F.A.C., stated: "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 petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), 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."

in any proceeding affecting rates or cost of service processed using the proposed agency action procedures of Sections 366.06(4) and 367.081(8), F.S. This declaratory statement applies solely to OPC and not to any other parties or entities.”). It would be nonsensical to conclude that the Commission believed that individuals and entities (apart from OPC) that have no discovery rights during the PAA part of the process can still seek intervention to become formal parties with no formal right of discovery.

9. At this time, FPL takes no position regarding whether Vote Solar satisfies the requirements for associational standing established in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982). FPL reserves the right to take the positions, once Vote Solar’s right to seek intervention is ripe and Vote Solar has a lawful point of entry: (a) that Vote Solar cannot demonstrate that a substantial number of its members are substantially affected by the Commission’s action; (b) that the subject matter of the proceeding is within the association’s general scope of interest and activity; and (c) that the relief requested is of the type appropriate for the association to receive on behalf of its members.

Vote Solar’s Motion for Administrative Hearing is Likewise Premature

10. The Commission should deny Vote Solar’s Motion for Administrative Hearing for reasons similar to those outlined above. Even more directly than its request to intervene, Vote Solar’s request for administrative hearing invites the Commission to set aside the process established by its rules. The Commission’s Rule 25-22.029(1), F.A.C. provides:

After agenda conference, the Office of Commission Clerk shall issue written notice of the proposed agency action (PAA), advising all parties of record that . . . they have 21 days after issuance of the notice in which to file a request for a Section 120.569 or 120.57, F.S., hearing.

The Rule is clear: Vote Solar has a right to request a hearing upon a proper showing of standing. But there is a prescribed time in which to do so – after the Clerk issues a notice of the Commission’s proposed agency action.

11. As contemplated in Order No. 2019-0143-PCO-EI, which suspended the tariff at issue in this proceeding, the Commission Staff is in the process of “review[ing] the petition and gather[ing] all pertinent information in order to present this Commission with an informed recommendation on the tariff proposal.”

12. Staff’s evaluation process to date has been nothing short of robust. FPL has responded to 98 data requests (not including subparts) propounded in Staff’s first and second sets of data requests, and is in the process of responding to an additional 61 (not including subparts) staff data requests propounded in Staff’s third set. In addition, FPL has responded to 7 interrogatories and a corresponding request for production from the Office of Public Counsel (“OPC”), and is in the process of responding to OPC’s second set of interrogatories.

13. Staff also duly noticed two informal meetings to address questions on various aspects of the proposed SolarTogether Program and Tariff. At least six FPL representatives appeared in person at each of those meetings to answer questions. A number of interested persons, including Vote Solar, also participated and were allowed to ask FPL questions.

14. The information FPL has provided in response to Staff’s data requests, in response to OPC’s discovery and in response to questions posed at Staff’s informal meetings, all provide a substantial range of data from which all interested persons and stakeholders can gather information and present positions to the Commission when the tariff is considered at an agenda conference.

15. Staff is scheduled to provide its recommendation on July 25, 2019, and FPL anticipates that the Commission will vote on its proposed agency action shortly thereafter. The significance of this is two-fold. First, it is premature for Vote Solar to conclude that its concerns will not be addressed. It is possible that, based on the PSC's decision, no hearing will be desired or necessary. To be sure, the allegations of disputed issues of fact and law purportedly pertinent to an agency action are demonstrably unripe as they relate to a PAA decision that is yet to be made. If, however, Vote Solar still has objections after the Commission issues the notice of its proposed agency action, its point of entry will open and, upon a proper showing of standing, Vote Solar will have the right to file a protest and request a hearing. Under that circumstance, if some form of SolarTogether Tariff is approved and a hearing is scheduled, any revenue collected pursuant to the tariff will be subject to refund. Therefore, participants and customers will be protected fully.

16. Second, the currently scheduled due date for Staff's recommendation suggests that the PAA portion of this docket will be concluded soon. Vote Solar did not, and cannot, point to any prejudice it would suffer if the Commission proceeds to vote on and issue a proposed agency action. Vote Solar points to no scheduled event or pending activity that requires an immediate hearing.

CONCLUSION

As demonstrated above, Vote Solar's Motion To Intervene and Motion for Administrative Hearing should be denied as premature. The Commission's rules sensibly provide that intervention should occur after the Commission determines and issues its proposed agency action. The Commission will soon receive its Staff's recommendation, which will be based on the information that Staff has gathered through a process that has included Vote Solar's

participation. The Commission will then have an opportunity to make a decision regarding FPL's SolarTogether Program and Tariff. Vote Solar's presumptions regarding potential legal or factual disputes regarding the Program or Tariff are speculative at this point and could be mooted by the Commission's decision. But even if they are not, Vote Solar will have the opportunity to request intervention and a hearing at the appropriate point of entry, to wit, the Commission's issuance of a PAA order memorializing its decision on FPL's SolarTogether Program. The Commission should decline Vote Solar's invitation to disrupt this process and deny the two motions.

WHEREFORE, FPL respectfully requests that the Commission deny Vote Solar's Motion To Intervene and Motion for Administrative Hearing.

Respectfully submitted this 21st day of June 2019.

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CERTIFICATE OF SERVICE
Docket No. 20190061-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service on this 21st day of June 2019 to the following:

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