

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

Docket No. 20190061

Filed: July 12, 2019

**FLORIDA POWER & LIGHT COMPANY'S AMENDED  
RESPONSE TO VOTE SOLAR'S MOTION TO INTERVENE**

Florida Power & Light Company ("FPL") hereby files its amended response to Vote Solar's Motion To Intervene. As described below, Vote Solar lacks standing to intervene. Its Motion should therefore be denied. In support, FPL states:

**Introduction**

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 and present the 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. On June 21, 2019, FPL objected to the motion on the ground that it was premature because the docket was proceeding on a proposed agency action track. As part of its objection, FPL reserved the right to take a position, at an appropriate time, 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).

3. In a subsequent pleading, FPL stated that, in the interest of moving forward expeditiously it would not oppose a determination by the Commission that it is best to proceed directly to an administrative hearing on FPL's Petition in this docket. FPL nevertheless maintained the positions asserted in its response to Vote Solar's Motion To Intervene.

4. On July 5, 2019, the Commission issued an Order Establishing Procedure setting this matter for hearing. Accordingly, it is appropriate for FPL to now address Vote Solar's lack of standing.

#### **Vote Solar Lacks Standing To Intervene**

5. To have standing, a party requesting intervention 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 party seeking intervention must show (1) that it will suffer injury in fact which is of sufficient immediacy for entitlement to a Section 120.57 hearing, and (2) that this substantial injury is of a type or nature which 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 Ass'n v. Florida Pari-Mutuel Commission*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); *see also, Village Park Mobile Home Ass'n, Inc. v. State Dept. of Business Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987) (speculation on the possible occurrence of injurious events is too remote).

6. To have associational standing, the intervenor must satisfy the test for associational standing set forth in *Florida Home Builders Ass'n v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982) (extended to administrative hearings by *Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So. 2d 753 (Fla. 1st DCA 1982)). Pursuant to *Home Builders*, a trade or professional association must demonstrate that: (i) a substantial number of its members are "substantially affected" by the proceeding, (ii) the subject matter of the proceeding is within the association's general scope of interest and activity, and (iii) the relief requested is of the type appropriate for the association to receive on behalf of its members. *Home Builders*, 412 So. 2d at 352-43.

7. Vote Solar alleges that it is non-profit organization that “work[s] to repower the United States with clean energy by making solar power more accessible and affordable through effective policy advocacy.” Mot. ¶ 5. The Motion alleges that “*Vote Solar* has a substantial interest in the subject matter of this proceeding,” explaining that it “oversees the development and implementation of community and shared policy initiatives throughout the country.” Mot. ¶ 8. Vote Solar further alleges that it has significant expertise in community solar program designs and that its members support well-designed community solar offerings. Mot. ¶¶ 9-10.

8. Based on these allegations, Vote Solar’s motion reflects that it is essentially an advocacy group focused on the development of solar energy policy and programs. While such policy advocacy has its place in legislative and rulemaking proceedings, it adds nothing to the issue at hand which is whether the Vote Solar motion to intervene meets the *Home Builders* test for standing to intervene in this proceeding. Likewise, Vote Solar’s purported role in “overseeing the development” of solar policy cannot form the basis for standing because it is the function of the Commission or the Legislature to oversee and develop such policy. The State of Florida has not delegated that job to Vote Solar.

9. Further, Vote Solar’s motion fails altogether to specify how the relief requested in FPL’s Petition and how the proposed FPL SolarTogether Program will substantially affect any of its individual members. There are no allegations that Vote Solar’s members will, for example, enroll in the FPL SolarTogether Program, or that any Vote Solar member would be prevented from enrolling. At best, the threadbare allegations in Vote Solar’s Motion might give rise to a purely speculative inference that a member of Vote Solar might someday be interested in learning about how FPL SolarTogether was designed. This is insufficient to establish standing. *See Florida Home Builders Ass’n v. City of Tallahassee*, 15 So. 3d 612, 613 (Fla. 1st DCA 2009)

(holding that association lacked standing where its basis for participation was based on speculative possibilities or factual assumptions pertaining to events that only might occur at some uncertain time in the future).

10. Vote Solar's allegations, even if accepted in the absence of evidence, also fail to show that the subject matter of this proceeding is within Vote Solar's general scope of interest and activity. The issues in this proceeding will focus, in large part, on the economics around the SolarTogether program and the benefits for both participants and non-participants. Vote Solar does not allege (nor presumably could it allege) that it is organized to represent the economic interests of its members.<sup>1</sup> For this reason, too, Vote Solar's Motion should be denied. *See In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company*, Order No. PSC-15-0295-PCO-EI, Docket No. 150075-EI, (July 20, 2015) (group organized to represent environmental as opposed to economic interests denied intervention in proceeding wherein FPL sought approval to mitigate unfavorable economic impact of a purchase power obligation).

### **Conclusion**

Vote Solar fails to demonstrate associational standing because its allegations, even if accepted as true, fail to show that its members are substantially affected by the relief sought by FPL in this proceeding, or that the relief to be afforded by the Commission is of the type Vote Solar is organized to address on behalf of its members. Vote Solar instead alleges that it has "significant expertise in community design." Such design knowledge might position Vote Solar

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<sup>1</sup> Vote Solar's failure to produce its charter or other organizational documentation makes it difficult to confirm the scope of the group's advocacy role. For example, it claims to have an interest in whether FPL SolarTogether correctly allocates capacity between customer types, but FPL was unable to find a reference to such interests or goals on Vote Solar's website.

to submit its ideas through amicus comments, if approved to do so by the Commission, but it does not constitute a basis for associational standing.

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

Respectfully submitted this 12th day of July 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 12th day of July 2019 to the following:

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