DUKE ENERGY FLORIDA

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DEPUTY GENERAL COUNSEL

July 9, 2020

VIA ELECTRONIC FILING

Adam J. Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Duke Energy Florida, LLC's Petition for a Limited Proceeding to Approve Third Solar Base Rate Adjustment*; Docket No. 20200153-EI

Dear Mr. Teitzman:

Enclosed for filing on behalf of Duke Energy Florida, LLC ("DEF") in the above-referenced Docket is DEF's Response to the Petition to Intervene of Hardee Dydo Solar, LLC.

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-4692 should you have any questions concerning this filing.

Sincerely,

/s/ Dianne M. Triplett

Dianne M. Triplett

DMT/cmk
Enclosure

cc: Parties of Record
Kevin J. Casey

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve third solar base rate adjustment, by Duke Energy Florida, LLC	Docket No. 20200153-EI Filed: July 9, 2020

DUKE ENERGY FLORIDA, LLC'S RESPONSE IN OPPOSITION TO THE PETITION TO INTERVENE OF HARDEE DYDO SOLAR, LLC

Duke Energy Florida, LLC ("DEF"), pursuant to Rules 28-106.204 and 28-106.205(1), Florida Administrative Code, hereby files its response in opposition to the Petition to Intervene of Hardee Dydo Solar, LLC ("HDS"). HDS does not have standing to intervene in this proceeding because economic interests of the sort asserted in its Petition are not the type of injury recognized as providing a basis for standing under this Commission's precedent, nor is the instant proceeding designed to address HDS's asserted injury in fact. Therefore, HDS should not be granted standing to participate as a party.

In support, DEF states as follows:

1. On July 2, 2020, HDS filed its Petition to Intervene in this docket, which was opened to address DEF's petition for approval of the third solar base adjustment as authorized under the 2017 Second Revised and Restated Stipulation and Settlement Agreement ("2017 Settlement") between DEF, the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphate ("White Springs"), and the Southern Alliance for Clean Energy ("SACE") (hereinafter collectively the "Settlement Parties").

2. In Paragraphs 4 and 5 of the Petition, HDS alleges that it is a developer of utility scale solar projects and has utility scale solar projects in development within DEF's service

territory, and asserts that it "is willing to supply power to DEF for resale to DEF customers at rates ten percent (10%) lower than the revenue requirement being sought by DEF."

3. HDS does not allege it has standing to participate in this proceeding as a matter of constitutional or statutory right, *see* Rule 28-106.205(2)(c), F.A.C., but instead relies upon its "Statement of Affected Interests", *see* Petition at ¶5, presumably in a failed attempt to show that its "substantial interests . . . are subject to determination or will be affected by th[is] proceeding" as required by Rule 28-106.205(2)(c), F.A.C.

4. The Petition does not satisfy either prong of the two-pronged test for standing to intervene set forth in *Agrico Chemical Company v. Department of Environmental Regulation,* 406 So. 2d 478, 482 (Fla. 2d DCA 1981) ("Before one can be considered to have a substantial interest in the outcome of the proceeding [a potential intervenor] must show 1) that he will suffer injury in fact of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his injury is of a type or nature which the proceeding is designed to protect."). Accordingly, the Petition must be denied.

5. To satisfy the "Injury in Fact" requirement, the asserted injury cannot be remote, speculative, abstract or indirect. *See Int'l Jai-Alai Players Ass'n v. Fla. Pari-Mutuel Comm'n*, 561 So. 2d 1224 (Fla. 3d DCA 1990); *Village Park Mobile Home Ass'n v. State, Dep't of Bus. Regulation*, 506 So. 2d 426 (Fla. 1st DCA 1987). "Further, an indirect effect on economic competition does not meet the 'immediacy' test." Order No. PSC-02-0324-PCO-EI (citing *Fla. Soc. of Ophthalmology v. State, Bd. of Optometry*, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988)).

6. HDS's asserted interests in this docket, i.e., its desire to sell undefined energy to DEF at allegedly lower rates than the rates proposed in DEF's petition, are economic interests that

are too remote and speculative to confer standing to participate in this proceeding.[1] *See* Order No. PSC-14-0329-PCO-EU (finding a solar trade association's alleged impact to its commercial and economic interests too speculative and indirect to confer standing); Order No. PSC-2017-0397-PCO-EI (finding an EV charging company's alleged economic injuries too speculative to support standing); *see also Fla. Soc. of Ophthalmology*; *Int'l Jai-Alai Players Ass'n*; *Village Park*. For this reason alone, the Petition should be denied.

7. The Petition also fails to satisfy the second prong of the *Agrico* test. This limited proceeding was established to consider DEF's petition for its third Solar Base Rate Adjustment ("SoBRA") as permitted by the 2017 Settlement and in accordance with the factors for review included in that Agreement; it is not a proceeding designed to protect HDS's economic interests in the alleged development of utility scale solar projects within DEF's service territory. Indeed, the Petition does not mention this prong of the standing test, focusing instead on the "injury" prong.

8. Moreover, HDS's petition seeks to inject issues into this proceeding that are outside the scope of the Commission's consideration in this docket as outlined by the terms of the 2017 Settlement. The 2017 Settlement clearly outlines the issues for determination in this docket: ". . . the issues for determination [in a SoBRA docket] are limited to: the reasonableness and cost effectiveness of the solar generation projects (i.e., will the projects lower the projected system cumulative present value revenue requirement 'CPVRR' as compared to such CPVRR without the solar projects); the amount of revenue requirements; and whether, when considering all relevant factors, DEF needs the solar project(s)." 2017 Settlement, ¶15c. The Commission has recognized,

[1] Indeed, it is unclear exactly what injury HDS is asserting will come to pass based on the outcome of this docket, but it is presumably its interest in selling undefined energy to DEF. Construing the allegations in the petition in the light most favorable to HDS, it appears to also raise cost of service issues and the resulting impacts on industry competitiveness and impacts to jobs in DEF's service territory. Of course, HDS has not asserted it is DEF's customer and DEF has not located any customer accounts in its name within its system, so it clearly does not have standing to raise such contentions.

and the Florida Supreme Court has affirmed, that such a review of a project/rate adjustment authorized as part of a settlement agreement is subject to the Commission's public interest standard used for reviewing settlement agreements themselves, not the prudence standard. *See Fla. Indus. Power Users Group v. Brown*, 273 So. 3d 926, 929-930 (Fla. 2019) (rejecting a collateral attack on a project authorized under a settlement agreement premised on the notion that the Commission was required to perform a prudence review of the challenged project).

9. HDS's petition attempts to raise three misleading issues for the Commission's consideration, styled as a "Statement of Ultimate Facts Alleged,"[2] two of which expressly question the prudence of the SoBRA projects and which are barred by the express terms of the Commission's review in this docket as outlined above. *See* ¶ 7, *supra*. The third issue outlined by HDS, whether the full costs of the project are being captured, is subsumed in the Commission's determination of the appropriate revenue requirements for the projects.

10. Thus, even if HDS had standing to participate in this docket, which it does not, two of the three issues it seeks to raise are inappropriate, *see FIPUG* at 930 ("If, as FIPUG suggests here, the Commission were later required to conduct a prudence or need determination for the SoBRA projects, it would have had to vacate the settlement order, which is contrary to the doctrine of administrative finality."), and the third is subsumed and capable of being litigated by the other Settlement Parties. Therefore, the Petition should be denied.

[2] The three issues raised in the petition are:
(a) Are the solar facilities for which DEF seeks Commission approval to increase rates prudent, cost effective and needed?
(b) Are the costs for which DEF seeks recovery from customers prudent and reasonable?
(c) Is DEF appropriately recognizing all costs to be borne by ratepayers in the estimated costs associated with DEF SOBRA projects to be approved, and specifically, are network upgrade costs being appropriately factored into project costs to be borne by ratepayers?
See Petition, ¶8(a)-(c).

WHERFORE, DEF respectfully requests that the Commission deny HDS's petition to intervene for lack of standing. HDS fails, on the face of its petition, to meet either prong of the *Agrico* standing test, and its petition attempts to raise distracting issues for consideration that are outside the scope of the Commission's limited review in this docket.

Respectfully submitted,

/s/ Dianne M. Triplett
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CERTIFICATE OF SERVICE
Docket No. 20200153-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 9th day of July, 2020.

/s/ Dianne M. Triplett
Attorney

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