

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Duke Energy Florida, LLC’s Petition) Docket No. 20210016-EI
for a limited proceeding to approve 2021)
settlement agreement, including general) Date Filed: April 13, 2021
base rate increases)

PETITION TO INTERVENE OF EVgo SERVICES LLC

Through counsel and pursuant to Florida Statutes (“F.S.”) Chapters 120 and 366, and Florida Administrative Code (“F.A.C.”) Rule 28-106.205, EVgo Services LLC (“EVgo”) hereby respectfully petitions the Florida Public Service Commission (the “Commission”) for leave to intervene in the above-captioned proceedings on the petition filed by Duke Energy Florida, LLC (“DEF”). In support of this petition, EVgo states as follows:

1. The name, address and telephone number of EVgo are:

EVgo Services, LLC
11835 W. Olympic Boulevard, Suite 900E
Los Angeles, CA 90064
Attn: Carine Dumit, Director, Market Development & Public Policy - East
(877) 494-3833
Carine.dumit@evgo.com

2. All notices, pleadings, orders, correspondence and other communications should be directed to and be served upon EVgo’s representatives:

Carine Dumit, Director
Market Development & Public Policy - East
EVgo Services, LLC
11835 W. Olympic Boulevard, Suite 900E
Los Angeles, CA 90064
Attn: Carine Dumit, Director, Market Development & Public Policy - East
(877) 494-3833
Carine.dumit@evgo.com

Bernice I. Corman
Attorney for EVgo
Bicky Corman Law PLLC
1250 Connecticut Ave., NW, Suite 700
Washington, DC 20036
(202) 213-1672
bcorman@bickycormanlaw.com

3. Background on EVgo

- a. EVgo operates America’s largest network of public electric vehicle fast charging, with more than 800 DC fast charging (“DCFC”) locations across 34 states in more than 60 metro areas nationwide.
- b. Currently, more than 130 million Americans live within a 10-mile drive of an EVgo fast charger. In early 2019, EVgo was proud to announce that it was the first North American charging network to be powered by 100% renewable energy. Most recently, EVgo announced a new partnership with General Motors, whereby EVgo will triple its DCFC network across 40 metropolitan areas over the coming years by building more than 2700 fast chargers across the country.¹ EVgo also works with other automakers like Nissan to expand charging infrastructure in important EV markets.²
- c. Fast charging infrastructure is critical to reaching Florida’s increasing population of EV drivers and is especially crucial to enable electrification for drivers without reliable access to charging at home or the workplace, including residents of multi-unit dwellings, fleets EV drivers who take part in the gig economy (rideshare, light

¹ EVgo, “General Motors and EVgo Aim to Accelerate Widespread EV Adoption by Adding Fast Chargers Nationwide” (July 31, 2020), <https://www.evgo.com/about/news/general-motors-and-evgo-aim-to-accelerate-widespread-ev-adoption-by-adding-fast-chargers-nationwide/>.

² EVgo, “Nissan and EVgo expand charging network with 200 new EV fast chargers” (August 6, 2019), <https://www.evgo.com/about/news/nissan-and-evgo-expand-charging-network-with-200-new-ev-fast-chargers/>.

duty grocery and food delivery), all of whom rely on public charging for the majority of their charging needs.

- d. EVgo presently owns and operates 35 charging stations across Florida and is actively working on growing the network. EVgo is a commercial customer of DEF, taking service at DEF's commercial class rates, and is subject to any rate impacts due to approval of the new rates and rate designs DEF has proposed in this docket. EVgo also has a substantial, specific, and direct business interest in this proceeding and will be directly affected by any decisions to approve DEF's proposed ownership and operation of charging stations and/or infrastructure, the costs of which DEF recoups from ratepayers, including EVgo.
- e. EVgo applauds DEF in its effort to address critical rate design barriers to EV deployment in Florida. However, EVgo seeks clarification of certain aspects of DEFs' proposals so it may better understand their structure and analyze their impacts on EVgo's current and planned DC fast charging stations.
- f. In short, EVgo's aim is to serve in a constructive fashion in this proceeding, and to potentially recommend improvements or adjustments to DEF's proposals, which EVgo can best do as a party, propounding its own data requests, and potentially offering its own evidence and testimony.
- g. EVgo has explored and participated in numerous proceedings across the country involving utility EV programs.³ EVgo's national market presence, experience, and

³ EVgo is presently a party in proceedings related to utility investment and rate design in territories including but not limited to Arizona Public Service, Atlantic City Electric, PSEG New Jersey, San Diego Gas & Electric. Additionally, EVgo is currently active in transportation electrification dockets being discussed at public utilities commissions in California, Connecticut, Maryland, New Jersey, New York, Virginia, and Texas.

expertise will prove to be valuable in assisting the Company and the Commission in the design and ultimate success of the Company's programs as proposed in the Settlement Agreement. EVgo's expertise and perspective will support the Commission in assessing the various approaches for implementation to most effectively grow and support Florida's EV charging infrastructure and EV adoption. Indeed, EVgo has demonstrated its ability to contribute uniquely and constructively to utility proceedings across the nation involving the utility's role in EV charging to achieve mutually beneficial outcomes for utilities, ratepayers, and EV drivers, and intends to do so in this proceeding.

4. Background on This Proceeding

- a. DEF urges that Florida Public Service Commission ("FPSC") approval of a 2021 Settlement Agreement between DEF, the Office of Public Counsel, the Florida Industrial Power Users Group ("FIPUG"), White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphate ("White Springs"), and Nucor Steel Florida, Inc. ("Nucor"), in this limited proceeding under Section 366.076 F.S.,⁴ is appropriate "because [the Agreement] addresses numerous base rate, infrastructure and clean energy matters that all Parties support as timely, appropriate and reasonable," and because it "is a fair, reasonable, and comprehensive resolution of matters that is in the best interests of DEF and its customers, and that is therefore in the public interest."⁵

⁴ Section 366.076, F.S., authorizes the Commission to conduct a limited proceeding to act upon any matter within its jurisdiction. Section 366.06, F.S., authorizes the Commission to determine rates "demanded, charged, or collected by any public utility" that are "fair, just and reasonable"

⁵ Duke Energy Florida, LLC's Petition for Limited Proceeding to Approve 2021 Settlement Agreement, Including General Base Rate Increases (hereinafter, "Petition"), p. 3.

- b. Through the Settlement Agreement, DEF has proposed new EV charging programs that would, among other things: (1) set new electricity rates for privately-owned charging stations such as those owned and operated by EVgo,⁶ as well as (2)(a) make permanent and significantly expand DEF’s authority to own and operate DCFC stations throughout DEF territory, the costs of which it would recover from ratepayers; and (b) approve the rate DEF would charge DCFC customers using its stations.⁷
- c. EVgo has a “substantial interest” that “will be affected through this proceeding,” the standard set forth in Section 120.52(13), F.S., and 28-106.205, F.A.C.⁸
- d. As to the first item, EVgo supports DEF’s proposed commercial EV tariff to apply to commercial charging stations a non-demand volumetric rate with time-of-use (“TOU”) elements, and urges the Commission to approve a non-demand rate in this docket, which would be in line with approvals in numerous other jurisdictions both

⁶ To qualify for the rebates that would be available through DEF’s proposed Commercial Charger Rebate Program, which rebates would total \$29 million across nearly all use cases, each charger must be separately metered and take service on Schedule GST-1, which is a non-demand TOU rate that includes peak, off-peak and super-off-peak times.

⁷ Here, DEF is proposing \$25 million in utility-owned DCFC that will target 100 new sites and cover funding for O&M on existing chargers (\$5.5 million). In Order No. PSC-2017-0451-AS-EU, issued November 20, 2019, in Docket No. 20170183-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC*, the Commission authorized the utility to purchase, install, own and support Electric Vehicle Service Equipment as part of a five-year pilot program, and incur up to \$8 million plus reasonable operating expenses. In the current docket, DEF is asking that the Commission allow the discontinuation of the pilot program approved in 2017, and approve the replacement EV program set forth in the 2021 Settlement Agreement. DEF is also proposing a new tariff for Fast Charge Fee (FCF-1) “based on the average cost for Fast Charging operators across Florida” to be collected from EV drivers using DEF-owned DC Fast Charging stations.

⁸ Docket No. 20180047-EI; Order No. PSC-2018-0338-PCO0EI, *In re: Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Duke Energy Florida, LLC* (July 5, 2018) (citing 28-106.25 F.A.C.) (hereinafter referred to as “TCJA”) (emphasis added).

in Florida and across the country.⁹ However, EVgo seeks to better understand DEF's proposed rate structure and to assist DEF and the Commission in shaping rates that are effective.

- e. EVgo therefore wishes to ask for further information from DEF that will permit it to analyze the proposed new rate and will permit EVgo to submit more informed testimony and/or argument.
- f. As to the second item, EVgo urges that the utility role be thoughtfully defined so that it complements and encourages, rather than hinders, the competitive market.¹⁰ For example, EVgo has historically found that utility investment and ownership in make-ready infrastructure (i.e., the distribution system electrical infrastructure, necessary to make a particular location able to accommodate Electric Vehicle Service Equipment) has been a valuable tool for ensuring the availability of EV charging. Where, however, a utility envisions that it will also own charging stations, EVgo urges that the Commission be cautious, as doing so may hamper the

⁹ See e.g., Connecticut Public Utilities Regulatory Authority Docket No. 13-12-11, *Request of CL&P for Approval of Electric Vehicle Rate Rider Pilot*,” approving the conversion of a demand charge to a kWh charge for commercial EV stations. EVgo applauds the progress made by the Commission in FPSC Docket No. 20200170-EI, Order No. PSC-2020-0512-TRF-EI, Issued December 21, 2020, in which the Commission Florida Power & Light's (FPL's) approved a demand limiter mechanism.

¹⁰ For example, regulators' concerns nationally with maintaining a competitive EV charging environment have led them to either limit utility ownership to instances where there is market failure, as was the case in New Jersey (see New Jersey Board of Public Utilities Docket No. Q020050357, p. 22, <https://www.nj.gov/bpu/pdf/boardorders/2020/20200923/.pdf>, where the Board added additional limitations on those recommended by Staff, in defining “Last Resort” locations eligible for utility ownership), New York (see July 16, 2020 Order Establishing Electric Vehicle Infrastructure Make-Ready Program and Other Programs, p. 33, available at PSC Docket Case 18-E-0138, <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=56005>, where, because of its “concerns over discouraging potential competitive investment through utility ownership,” the New York Public Service Commission limited utility ownership of EV supply equipment “only . . . in limited circumstances, such as existing utility-owned EV supply equipment or utility-owned EV supply equipment that exclusively serves utility-owned vehicles or employee vehicles.”), and California (in D.14-12-079, the California Public Utilities Commission allowed for consideration of utility proposals on a case-specific basis and reaffirmed the use of a balancing test that weighs the benefits of utility ownership of charging infrastructure against potential competitive limitation).

benefits (i.e., support for DCFC deployment) enabled by the proposed tariff reform (GST-1) if it discourages private investment. EVgo urges the Commission to be mindful of ensuring a level playing field, as the Commission considers both expanding and make permanent DEF's role as an owner/operator of charging stations, as well as approving the rate that DEF would apply to its DCFC customers.

- g. EVgo respectfully submits that there is broad recognition that the level of investment needed to ensure sufficient proliferation of EV charging infrastructure is so great, it requires participation from both the private and public sector. *See e.g.*, the Florida Department of Transportation's [December 1, 2020 FDOT EV Master Plan Status Report](#), Slide 15, which explicitly encourages the “[d]evelop[ment] of a model policy for establishing public-private partnerships to encourage EVSE investment.”¹¹ To this end, EVgo is eager to share its experience and analyses in identifying optimal roles for both, as it has done previously in a separate docket before this Commission,¹² as well as elsewhere in the country.¹³

¹¹ The FDOT Report recommends: “A focus on flexibility should be maintained in order to adopt different models of utility and third-party ownership/operation based upon site-specific circumstances. In addition, prematurely and narrowly defining the role of public utilities should be discouraged given the nascence of the market and the urgent need to address gaps in charging infrastructure.” Slide 9. Consistent with this admonition, EVgo respectfully submits that the “gaps” can only appropriately be defined, and the recommended “flexibility” maintained, with robust input from the competitive market.

¹² EVgo is uniquely situated to provide information on “the average cost for Fast Charging operators across Florida,” which information DEF has not yet proffered, and, EVgo respectfully submits, cannot. For example, DEF is unable to fully assess the total operating costs borne by private owner/operators, i.e., costs beyond the costs of electricity. *See, e.g.*, EVgo's November 20, 2020 comments in FPSC Docket No. 20200170 (*In re Florida Power & Light Company's Petition for Approval of Optional Electric Vehicle Public Charging Pilot Tariffs*).

¹³ Among other cases, EVgo offered testimony before the New Jersey Board of Public Utilities (BPU Docket No. EO18020190) on the impact of utility ownership and operation of DCFC stations on the nature, growth and economics of the competitive DCFC market, in which EVgo is an active participant.

- h. EVgo meets both prongs of the test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), for being granted intervenor status. *Agrico* requires that the intervenor 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.
- i. EVgo meets the first prong of the *Agrico* test, as the rates DEF is proposing will directly affect EVgo's operating costs. *See TCJA*, which found that PCS Phosphate met the first prong of *Agrico* because its production and operating costs would be affected by the proceeding. In addition to being directly affected as a customer by DEF's proposed changes to commercial rates to be charged to DEF's customers, that include EVgo, EVgo's operating costs may also be directly affected by the rate DEF proffers for its proposed utility-owned chargers.¹⁴
 - ii. Further, DEF's proposed ownership and operation of fast charging would directly impact the size and scope of EVgo's current network as well as EVgo's planned expansion in Florida. A potential challenge with a utility-owned and operated DC fast charging network in close proximity to a third-party operator's network is that the utility may consume the usage that the competitive market relies on to sustain its economics. If a third-party operator like EVgo does not see adequate usage to sustain its network, the lower usage may discourage future private sector investments. For these

¹⁴ *See* n. 12, *supra*.

reasons, as EVgo prioritizes its investments, it may deploy fewer charging stations in places where utility-ownership is prevalent and may jeopardize the investments EVgo has made to date in planning future stations.

- iii. Such potential result satisfies *Agrico*'s requirement that the intervenor show he will suffer injury in fact that is of sufficient immediacy to entitle him to a hearing. *See Palm Beach County Env't'l Coalition v. Fla. Dep't of Env'tl. Prot.*, 14 So. 3d 1076 (4th Dist. Ct. of Appeal June 3, 2009) (“[I]t is sufficient that the petitioner demonstrate . . . that his substantial interests ‘could reasonably be affected by . . . [the] proposed activities.’”) (emphasis theirs).
- iv. EVgo has also shown it satisfies the second prong of *Agrico*, as the injury EVgo will sustain as a result of this proposal (the impacts on its ability to compete in the Florida EV charging market) does conflict with one of the interests that this rate case is designed to protect – that is the public’s interest in a cost-effective, expanded EV charging network. *See* Section 339.287(1)(f), F.S., which states that “ensuring the prompt installation of adequate, reliable charging stations is in the public interest.” *See also*, FDOT [December 1, 2020 FDOT EV Master Plan Status Report](#), Slide 5, expressly noting that S.B. 7018, signed into law as F.S. 339.287 (“Electric vehicle charging stations; infrastructure plan development”), required that FDOT, with input from the FPSC, coordinate, develop and recommend an Electric Vehicle Master Plan, whose “primary goals and objectives” include: “encourag[ing] the expansion of electric vehicle use in this state.”

- i. As noted by the Commission in its April 12, 2021 Order,¹⁵ FDOT is the entity primarily responsible for “identifying the regulatory structure necessary for the delivery of electricity to electric vehicles and charging station infrastructure, including competitive neutral policies and the participation of public utilities in the marketplace,” Section 339.287(2)(c)(4), F.S. However, it is exclusively this Commission which has jurisdiction to approve DEF’s proposed rate changes in this proceeding, not FDOT. Section 366.06(1), F.S. Further, it is exclusively this Commission which has the sole authority to determine whether it is fair, just and reasonable for DEF to own and operate charging stations, and in turn, to recover its costs in so doing from ratepayers. *Id.*
- j. It is therefore imperative that in this proceeding, this Commission ensure that DEF proceeds with programs that promote competition and leverage utilities’ strengths in infrastructure buildout with the scale, learning and efficiencies that private developers have built over years of experience in EVSE deployment. As such, EVgo has a direct and tangible business interest in proper program design that supports DC fast charging market expansion and a vibrant private sector in this state. Of paramount concern for this proceeding, the public has an interest in ensuring that revenues collected from ratepayers are used in a manner that facilitates, rather than hinders, private participation, and enhances this state’s development of “public-private partnerships to encourage EVSE investment.”¹⁶ *See Citizens of Florida v. Mayo*, 333 So. 2d 1 (May 5, 1976) (remanding a case for

¹⁵ Order No. PSC-2021-0126-PCO-EI, Issued April 12, 2021, p. 4.

¹⁶ *See supra*, p. 7.

further proceedings, where findings underlying the Commission’s orders were inadequate to show whether the interim rate increase awarded to the utility was supported by competent and substantial evidence, and where the Commission failed to allow public counsel to present evidence and cross-examine witnesses).

5. Relief Sought -- EVgo seeks full party status but limited to the issues directly related to EV charging, consistent with 28-106(1), F.A.C., which permits a presiding officer to impose terms and conditions on the intervenor to limit prejudice to other parties. As a private (competitive) developer and owner/operator of EV charging stations, EVgo can offer a unique perspective to the Commission by its participation in this proceeding. Further, no other entity presently accorded party status can adequately represent EVgo’s interests.
6. Statement as to whether EVgo Supports or Opposes the Preliminary Agency Action – For the reasons stated herein, EVgo generally supports DEF’s proposed EV programs, conditioned on the Commission’s granting the modifications EVgo has and will propose.
7. Statement required by subsection 28-106.204(3) – EVgo has conferred with the parties to this action on EVgo’s petition. DEF opposes EVgo’s petition; the Office of Public Counsel does not support it; and Nucor Steel and PCS Phosphates took no position. Florida Industrial Power Users Group did not respond by the time of this filing.

Respectfully submitted,

Carine Dumit

Carine Dumit
Director, Market Development & Public Policy – East
carine.dumit@evgo.com



Bernice I. Corman
Bicky Corman Law PLLC
bcorman@bickycormanlaw.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Duke Energy Florida, LLC’s Petition) Docket No. 20210016-EI
for a limited proceeding to approve 2021)
settlement agreement, including general) Date Filed: April 13, 2021
base rate increases)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Permission for Leave to Intervene by EVgo SERVICES, LLC has been furnished to the parties of record and interested persons in the above-captioned docket on this 13th day of April, 2021.

s/ _____
Carine Dumit
Market Development & Public Policy – East
EVgo SERVICES, LLC
11835 W. Olympic Boulevard, Suite 900E
Los Angeles, CA 90064
(877) 494-3833
Carine.dumit@evgo.com