

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re. Duke Energy Florida, LLC's Petition
for a limited proceeding to approve 2021
settlement agreement, including general
base rate increases

Docket No. 20210016-EI

Dated: April 20, 2021

**DUKE ENERGY FLORIDA, LLC'S RESPONSE TO
EVGO SERVICES LLC'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 to the Petition to Intervene filed by EVgo Services LLC ("EVgo"), and in support thereof states as follows:

1. On April 14, 2021, EVgo filed its Petition to Intervene in Docket No. 20210016-EI, which was opened to address the 2021 Settlement Agreement ("2021 Settlement") between DEF, the Office of Public Counsel ("OPC"), the Florida Industrial Power Uses Group ("FIPUG"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("White Springs"), and Nucor Steel Florida, Inc. ("Nucor") (collectively, the "Parties").

2. In its Petition, EVgo alleges that it "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." *Petition*, ¶ 3.a. EVgo asserts that it "presently owns and operates 35 charging stations across Florida and is actively working on growing that network." *Id.* at ¶ 3.d.

3. In attempt to demonstrate its affected interests, EVgo argues that it is a commercial customer of DEF and will be directly affected by proposed changes to DEF's commercial rates.¹

¹ EVgo mistakenly represents that the 2021 Settlement sets "new electricity rates for privately-owned charging stations such as those owned and operated by EVgo." *Petition*, ¶ 4.b. In reality, the 2021 Settlement does not propose any new rates for privately-owned charging stations.

EVgo also argues that DEF's proposal in the 2021 Settlement to establish a permanent electric vehicle charging program "would directly impact the size and scope of EVgo's current network as well as EVgo's planned expansion in Florida," as EVgo "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." *Id.* at ¶ 4.h.

4. To intervene in this proceeding, EVgo must satisfy the test for standing set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). Under *Agrico*, to demonstrate a substantial interest in the outcome of a proceeding, a proposed 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 of nature which the proceeding is designed to protect." 406 So. 2d at 482. Because EVgo is a commercial customer, DEF concedes that it has a substantial interest in the rates and charges that will be determined in this proceeding.

5. However, while EVgo has standing to intervene as a customer, its arguments related to market competition and impacts to its business interests are beyond the scope of this proceeding. *See* Order No. PSC-2017-0397-PCO-EI (a proposed intervenor's "alleged injury to its economic interests and the free market are not what the governing statutes of this proceeding were meant to protect"). For this reason, DEF requests that the Commission strictly limit EVgo's intervention to its interests as a DEF customer and preclude EVgo from raising arguments based on its interests as a market competitor. *See* Order No. PSC-2016-0550-PCO-EI (granting intervention, but limiting the issues "to those appropriate to the scope of an electric rate case proceeding"); Order No. PSC-2009-0280-PCO-EI (granting intervention to an individual customer and stating that "intervention should not be construed to permit him to raise arguments outside the scope of the

issues the Commission determines to address in this rate proceeding,” specifically including “issues related to his competitive economic or business interests”).

6. Despite EVgo’s arguments to the contrary, this limited proceeding to consider the 2021 Settlement is not a proceeding designed to protect EVgo’s economic interests in maintaining its share of the electric vehicle charging market. While the Petition argues, by citation to section 339.287, Florida Statutes, that “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 this rate case is designed to protect – that is the public’s interest in a cost-effective, expanded EV charging network,” this is a mischaracterization of the law. *Petition*, ¶ 4.h.

7. Section 339.287, Florida Statutes, requires the Department of Transportation (“FDOT”) to “coordinate, develop, and recommend a master plan for current and future plans for the development of electric vehicle charging station infrastructure along the State Highway System.” In developing the master plan, the Commission, in consultation with FDOT and the Department of Agriculture and Consumer Services, is primarily responsible for “identifying the type of 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.” Fla. Stat. § 339.287(2)(c)4. The statute does not direct the Commission – or even provide it with the discretion – to consider competitive interests in the context of a ratemaking proceeding filed under chapter 366, Florida Statutes. And, the Commission already found this argument “unpersuasive” in its Order Denying ChargePoint, Inc.’s Petition to Intervene in this proceeding. *See* Order No. PSC-2021-0126-PCO-EI (finding ChargePoint’s reliance on section 339.287, Florida Statutes, “unpersuasive because the statute

does not confer standing on ChargePoint in a rate proceeding” and because “that statute does not confer jurisdiction on the Commission”).

8. DEF’s petition for review and approval of the 2021 Settlement was filed under section 366.076, Florida Statutes, and nothing in that statute evidences a legislative intent to protect the business and economic interests asserted in the Petition. Accordingly, the Commission should preclude EVgo from raising issues related to those interests.

WHEREFORE, for the foregoing reasons, DEF respectfully requests that, should the Commission grant EVgo’s Petition to Intervene, the Commission strictly limit EVgo’s intervention to its interests as a DEF customer and preclude EVgo from raising arguments based on its business interests or its interests as a market competitor. Such arguments are inappropriate and beyond the scope of this rate case proceeding.

Respectfully submitted this 20th day of April, 2021.

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CERTIFICATE OF SERVICE

Docket No. 20210016-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 20th day of April, 2021.

/s/ Dianne M. Triplett

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