

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Florida)
Power & Light Company)
_____)

Docket No. 20250011-EI
Filed: June 10, 2025

**UNOPPOSED MOTION TO ACCEPT LATE FILED
TESTIMONY OF DAVID FIALKOV**

Americans for Affordable Clean Energy, Inc. ("AACE"), Circle K Stores, Inc. ("Circle K"), RaceTrac Inc. ("RaceTrac"), and Wawa, Inc. ("Wawa") (hereinafter, collectively, "Fuel Retailers"), pursuant Rule 28-106.204, Florida Administrative Code, respectfully request the Florida Public Service Commission ("Commission" or "PSC") accept the testimony of David Fialkov filed on June 9th, 2025 at 5:06 p.m. In support of this Motion, the Fuel Retailers state as follows:

1. Pursuant to the Order Establishing Procedure, Intervenors' testimony and exhibits were due to be filed with the Office of Commission Clerk on June 9, 2025, either electronically or on paper. Order No. PSC-2025-0075-PCO-EI, at 2 (March 14, 2025) ("Order"). The Order further specifies that if filing paper copies, such testimony and exhibits must be filed with the Clerk by 5:00 p.m. The Order could be read to apply the 5:00 p.m. deadline to paper copies only, but the practice has been to electronically file as well by 5:00 p.m.

2. While the Order Establishing Procedure, Section IV, Prefiled Testimony and Exhibits, notes, "Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements *may bar* admission of such exhibits and testimony" (emphasis supplied), such language is permissive and recognizes the authority of the Commission to accept the Fuel Retailers' prefiled testimony after 5:00 p.m.

3. On June 9, 2025, the Fuel Retailers filed the direct testimony of David Fialkov at approximately 5:06 p.m., past 5:00 p.m. due to unforeseen technical circumstances.

4. Understandably, the PSC can impose and enforce deadlines to ensure the expedient resolution of cases before them. Noncompliance with the PSC's schedule *may* stymy this effort and could be unfair to the parties. That is simply not the case here.

5. While Mr. Fialkov's testimony was received by the Commission Clerk after 5:00 p.m., service of that testimony timely occurred thereafter at 6:18 p.m., consistent with the requirement to serve testimony “no later than the date filed with the Commission.” Order, at 2. In addition, the Fuel Retailers also filed their Petition to Intervene on June 9th, prior to 5:00 p.m., but only after notifying all parties on June 5, 2025, of their intent to intervene and potentially file testimony. As such, none of the parties are prejudiced by accepting this testimony a mere six minutes after 5:00 p.m. Appropriately, Florida public policy favors “deciding a case on its merits rather than on a technicality.” *J.J.K. Int'l, Inc. v. Shivbaran*, 985 So. 2d 66, 69 (Fla. 4th DCA 2008).

6. The current situation is akin to the Fourth District Court of Appeal's practice of treating non-jurisdictional filings that were filed by 9:00 am as having been filed the previous day. *See Capone v. Florida Bd. of Regents*, 774 So. 2d 825 (Fla. 4th DCA 2000). Assuming the 5:00 p.m. deadline applies to electronic filings, missing that deadline by six minutes is a non-jurisdictional filing that *Capone* recognized courts were permitted to accept after procedural deadlines.

7. For the aforementioned reasons, the Fuel Retailers represent that there is good cause to accept the testimony of David Fialkov for filing. As the Fuel Retailers noted in their Petition to Intervene and in the cover letter accompanying the testimony, the testimony was submitted subject to granting the Petition to Intervene. Filing testimony is without regard to the substance or merits of the testimony, nor is filing admission into the record, which are matters to be addressed later.

8. Counsel for the Fuel Retailers conferred with counsel for all parties of record and FPL and the intervenors take no position on this Motion.

WHEREFORE, Americans for Affordable Clean Energy, Circle K Stores, Inc., RaceTrac, Inc., and Wawa, Inc. request that the Commission accept the testimony of David Fialkov for filing in this proceeding, subject to granting the Petition to Intervene and recognizing that acceptance for filing is without regard to the substance or merits of the testimony or being admitted in the record, which are matters to be addressed later.

RESPECTFULLY SUBMITTED this 10th day of June, 2025.

/s/ Floyd R. Self

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Unopposed Motion To Accept Late Filed Testimony Of David Fialkov has been furnished by electronic mail, this 10th day of June 2025, to the following:

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/s/ Floyd R. Self
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