

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for emergency variance from or
waiver of Rule 25-6.049(5)-(6), F.A.C., by
Casa Devon Venture, LP.

Docket No: 20200175-EU

Date: October 5, 2020

**FLORIDA POWER & LIGHT COMPANY'S CORRECTED
MOTION FOR LEAVE TO INTERVENE**

Florida Power & Light Company ("FPL", or the "Company"), pursuant to Chapters 120 and 366, Florida Statutes ("F.S."), and Rule 28-106.205, Florida Administrative Code ("F.A.C."), hereby moves the Florida Public Service Commission ("Commission"), through the Presiding Officer, for leave to intervene in the above-referenced docket. In support of this petition, FPL states as follows:

I. INTRODUCTION

1. FPL is an investor-owned utility with headquarters at 700 Universe Boulevard, Juno Beach, Florida 33408, operating under the jurisdiction of the Commission pursuant to the provisions of Chapter 366, Florida Statutes. FPL provides generation, transmission, and distribution service to more than 5 million retail customers.

2. Any pleading, motion, notice, order or other document required to be served upon FPL or filed by any party to this proceeding should be served upon the following individuals:

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3. On July 1, 2020, Casa Devon Venture, LP (“Casa Devon”) filed an emergency petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), F.A.C., so that it can master meter its Casa Devon apartment building. As alternative relief, Casa Devon asked that if the Commission does not grant the variance, it should find that Casa Devon does not need a rule variance or waiver because the Casa Devon apartment falls within one of the individual metering requirement exceptions described in Rule 25-6.049(5)(c) or (d), F.A.C.

4. On July 27, 2020, FPL submitted comments for the Commission’s consideration as it reviewed and decided the merits of Casa Devon’s emergency petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), F.A.C. Therein, FPL noted that Casa Devon’s request to master meter the 210 apartment units housing 210 individual FPL customers failed to satisfy any of the exemptions from individual electric metering expressly enumerated in Rule 25-6.049, F.A.C. FPL also noted that Casa Devon’s request to master meter these 210 apartment units would not achieve the underlying purpose of the Florida Energy Efficiency and Conservation Act (“FEECA”), Sections 366.81, et seq., which is the enabling statute for Rule 25-6.049, F.A.C. Finally, FPL noted that Casa Devon’s purported need for a waiver or variance appears to have been caused by its own actions (or inactions) by entering into an agreement with the U.S. Department of Housing and Urban Development (“HUD”), including an agreement to master meter the apartment, without first securing a waiver from the Commission’s duly promulgated and binding individual metering rules.

5. On September 2, 2020, the Commission issued a Notice of Proposed Agency Action Order No. PSC-2020-0295-PAA-EU (“PAA Order”), denying Casa Devon’s emergency petition for a variance from or waiver of the individual electric metering requirement of Rule 25-

6.049(5) and (6), F.A.C., as well as Casa Devon's alternative request for relief. Therein, the majority for the Commission determined that: (1) Casa Devon failed to meet its burden to demonstrate the petition should be considered on an emergency basis because the purported emergency situation was caused by Casa Devon's own actions; (2) Casa Devon failed to meet its burden to demonstrate that it will achieve the purpose of FEECA, which is the underlying statute for Rule 25-6.049, F.A.C., by other means; (3) Casa Devon failed to meet its burden to demonstrate that application of the individual metering requirement of Rule 25-6.049, F.A.C., would create a substantial hardship or violate principles of fairness because alleged economic hardship was caused by its own actions of entering into the HUD agreement without first consulting the Commission's rules to determine whether it could master meter and without first requesting a waiver or variance; and (4) that Casa Devon's alternative request for the Commission to provide and opinion as to the applicability of the provisions of Rule 25-6.049(5)(c) and (d), F.A.C., to Casa Devon's particular set of circumstances constituted a request for a declaratory statement which was not in fact requested and which in any case failed to meet the requirements of Rule 25-105.002, F.A.C.

6. On September 17, 2020, Casa Devon filed a Petition and Corrected Petition for Formal Administrative Hearing ("Petition"), protesting the Commission's PAA Order. Casa Devon's Petition alleges that the PAA Order: (1) is not supported by competent substantial evidence; (2) did not appropriately consider that FPL's actions were a cause of Casa Devon's need to file on an emergency basis; and (3) the Commission misapplied the requisite legal standard. Casa Devon's Petition requests a formal de novo hearing before the Division of Administrative Hearings. However, on October 1, 2020, the Commission issued an Order Establishing Procedure

in this docket (Order No. PSC-2020-0335-PCO-EU) indicating that the Commission will conduct the requested hearing on November 19-20, 2020.

7. FPL has substantial interests that will be directly and indirectly affected by the allegations, claims, and determination of Casa Devon's Petition as set forth below and, therefore, requests that the Commission grant this motion and allow FPL intervention with full party rights.

II. STANDARDS FOR INTERVENTION

8. Pursuant to Rule 28-106.205, F.A.C., persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene. Motions for leave to intervene must be filed at least twenty (20) days before the final hearing, must comply with Rule 28-106.204(3), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.

9. To have standing, the intervenor 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). Pursuant to the *Agrico* test, the intervenor must show that: (1) they will suffer injury in fact that is of sufficient immediacy to entitle the intervenor 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. The "injury in fact" must be both real and immediate and not speculative or conjectural. *International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990).

III. FPL IS ENTITLED TO INTERVENOR STATUS

A. Substantial Interests

10. Rule 28-106.205(3), F.A.C., provides that specifically-named persons whose substantial interests are being determined in a proceeding may become a party by entering an appearance and need not request leave to intervene. The Commission has previously recognized interventions on such a basis. *See, e.g.*, Order No. PSC-2018-0469-PCO-EU. Given the numerous times that Casa Devon's Petition mentions FPL and alleges, incorrectly, that FPL was somehow the cause of Casa Devon not becoming aware of the legal requirements of a duly promulgated and binding Commission rule, FPL submits that it is entitled to become a party to this proceeding for these reasons alone pursuant to Rule 28-106.205(3), F.A.C. Notwithstanding, FPL asserts that there are numerous other reasons that clearly demonstrate FPL has substantial interests that are subject to determination or will be affected by the eventual determination in this proceeding.

11. First, the Petition seeks Commission consent to permit Casa Devon to master meter the 210 apartment units that are currently individually metered for 210 FPL customers, as required by Commission Rule 25-6.049, F.A.C. FPL has an interest and statutory obligation to ensure that its customers continue to receive safe and reliable service consistent with the policies and requirements adopted by the Florida Legislature and this Commission, including the legislative findings and purpose of FEECA.

12. Second, Casa Devon's Petition repeatedly alleges that the Commission's factual determinations in the PAA Order were based on FPL's representations to the Commission. *See* Petition at 3-5. Thus, according to Casa Devon's own Petition, FPL's representations are material to determining whether the Commission's decision is supported by substantial evidence.

13. Third, Casa Devon repeatedly alleges that its failure to become aware of the legal requirements set forth in Rule 25-6.049, F.A.C., “was not of its own doing and was caused directly by FPL’s lack of cooperation throughout the process,” which FPL denies. *See* Petition at 7-10, 15-16. Thus, the alleged actions by FPL are facially material to Casa Devon’s claims in this proceeding. Moreover, FPL clearly has a substantial interest in defending itself against such allegations.

14. Finally, Casa Devon asserts that FPL’s actions “contravene[d] numerous Florida Statutes enacted and amended over the past decade,” which FPL denies. *See* Petition at 9. These statements, however misplaced, make FPL’s compliance with Florida law and Commission’s rules a focal aspect of the proceeding, and those statements alone are sufficient to invoke FPL’s substantial interests in the outcome of any future determination on the matter. Without an opportunity to address these allegations, FPL would be unable to protect itself against assertions regarding the Company’s compliance with state laws and regulations.

B. Standing to Intervene

15. FPL has real and substantial interests that will be directly and indirectly affected by the disposition of the claims asserted in Casa Devon’s Petition.

16. Casa Devon’s request for a waiver or variance from the individual metering requirement, if approved, will have an immediate and direct impact on FPL. Currently, the 210 apartment units that are the subject of Casa Devon’s request are each individually metered FPL customers. If Casa Devon’s request is granted, and if it is technically feasible to do so, these individually metered apartment units will need to be converted to a single customer, master meter. Such a result will clearly require FPL to take appropriate actions on its electric infrastructure and billing system necessary to implement and accommodate the conversion.

17. Additionally, if Casa Devon's request to master meter these 210 apartment units is granted, FPL would be indirectly affected because it would no longer be able to offer these individual customers the benefits of net metering, Demand-Side Management programs, budget billing, and similar services that would no longer be available to these individual customers.

18. Further, FPL will be directly affected by Casa Devon's claims and allegations that FPL's purported lack of cooperation throughout the process directly caused Casa Devon's failure to become aware of the legal requirements set forth in Rule 25-6.049, F.A.C., and resulted in a delay in the project and ability to master meter the 210 apartment units. Casa Devon's Petition also states that a failure to complete the project on time would result in a breach of Casa Devon's agreement with HUD. Although FPL denies these allegations, these allegations when read as a whole suggest that Casa Devon is attempting to assert that FPL should be responsible if Casa Devon is in breach of its contract with HUD for failing to complete the project on time. If accepted as true in this proceeding, these allegations could potentially subject FPL to future claims for contributing to a breach of the contract with HUD.

19. FPL will also be directly affected by Casa Devon's claims and allegations that FPL purported failed to comply with Florida law and Commission's rules, which FPL denies. If accepted as true, these allegations would cause immediate injury to FPL (*i.e.*, finding that FPL violated the law or Commission rules) and potentially could subject FPL penalties under Section 366.095, F.S., and reputational harm.

20. Finally, not permitting FPL to intervene and defend against Casa Devon's allegations made directly against FPL would infringe on FPL's due process rights. FPL is entitled to defend itself against claims that it contributed to a breach of contract and/or violated the law or Commission rules.

21. For these reasons, FPL submits that it clearly has standing under the *Agrico* test to intervene in this case and defend against its substantial interests that will be directly and indirectly affected by the disposition of Casa Devon's Petition in this proceeding.

C. FPL Supports the Findings and Determinations of the PAA Order

22. Pursuant to Rule 28-106.25(2)(d), F.A.C., a motion for leave to intervene must include a statement whether the intervenor supports or opposes the preliminary agency. FPL hereby states that it supports and agrees with the finding and determination of the PAA Order.

23. Casa Devon asserts that the Commission's decision was not supported by competent substantial evidence. That appellate review standard does not apply to an initial PAA decision. FPL disputes the substance of the claims made by Casa Devon and maintains that the Commission's decision reflected in the PAA Order is consistent with and a lawful and appropriate application of Section 120.542, F.S., and Commission policy encouraging individual metering to promote energy conservation.

24. FPL disputes Casa Devon's allegations that it has satisfied the requirements for granting a rule waiver or variance under Section 120.542, F.S.

25. FPL disputes the claims of Casa Devon that FPL was operating out of compliance with or contrary to Florida statutes. *See* Petition at 9.

26. FPL disputes the claims of Casa Devon that FPL caused a delay that necessitated Casa Devon filing a petition on an emergency basis. *See* Petition at 9.

27. FPL disputes the claims made by Casa Devon Casa that it satisfied its burden to demonstrate the petition should be considered on an emergency basis. *See* Petition at 15-16.

28. FPL disputes the claims made by Casa Devon that it satisfied its burden to demonstrate that it will achieve the purpose of FEECA, which is the underlying statute for Rule

25-6.049, F.A.C., by other means. *See* Petition at 11-13. FPL further denies that the Commission's decision to deny Casa Devon's waiver request subverts the underlying purposes of the governing statutes. *See* Petition at 14.

29. FPL disputes the claims made by Casa Devon that it satisfied its burden to demonstrate that application of the individual metering requirement of Rule 25-6.049, F.A.C., would create a substantial hardship or violate principles of fairness. *See* Petition at 11.

30. FPL disputes the claims made by Casa Devon that it satisfied its burden, under its alternative request for relief, to demonstrate that its proposal to master meter the 210 apartment units housing 210 individual FPL customers qualified for any of the exemptions from individual electric metering expressly enumerated in Rule 25-6.049, F.A.C. *See* Petition at 14.

31. FPL disputes the claims made by Casa Devon that the Commission erred in concluding that Casa Devon's alternative request for the Commission to give an opinion as to the applicability of the provisions of Rule 25-6.049(5)(c) and (d), F.A.C., to Casa Devon's particular set of circumstances essentially constitutes a request for a declaratory statement that was not requested and which in any case fails to meet the requirements of Rule 25-105.002. *See* Petition at 5-6.

32. FPL further states that it is not known at this time which issues of material fact may now or in the future be disputed by others planning to participate in this proceeding and reserves the right to take a position on those issues at a later time.

IV. CONCLUSION

33. For the reasons explained above, FPL has substantial interests that will be directly and indirectly affected by the disposition of Casa Devon's Petition in this proceeding. Indeed, the

Casa Devon Petition alleges facts that sufficiently demonstrate that FPL has a real and substantial interest in the claims asserted by Casa Devon.

34. FPL submits that it has satisfied the requirements of the *Agrico* test for standing in this proceeding and met the requirements of Rule 28-106.205, F.A.C, for intervention. Therefore, FPL requests that the Commission grant this motion, allow FPL intervention with full party rights, and that the Commission affirm the PAA Order.

35. Pursuant to Rule 28-106.204(3), F.A.C., FPL has contacted Casa Devon to determine whether Casa Devon objects to FPL's request for intervention. Casa Devon has indicated it has no objection to FPL's intervention in this proceeding.

WHEREFORE, FPL respectfully requests that the Commission approve this motion and grant FPL status as an intervenor and party to this proceeding.

Respectfully submitted this 5th day of October, 2020,

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CERTIFICATE OF SERVICE
Docket No. 20200175-EU

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic mail this 5th day of October 2020 to the following:

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