

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of FPL
SolarTogether program and tariff, by Florida
Power & Light Company.

DOCKET NO. 20190061-EI
ORDER NO. PSC-2019-0317-PCO-EI
ISSUED: July 31, 2019

ORDER GRANTING INTERVENTION

On March 13, 2019, Florida Power & Light Company (FPL) filed a petition for a new voluntary community solar program, called FPL SolarTogether, which will allow FPL customers to subscribe to a portion of new solar capacity built through the program and to receive a credit for a portion of the system savings produced by that solar capacity. Phase 1 of the program consists of five FPL SolarTogether projects that comprise a total of 20 solar power plants that are 74.5 megawatts each. This docket is currently scheduled for hearing on October 15-16, 2019.

By motion dated June 14, 2019, Vote Solar requested permission to intervene in this proceeding. Vote Solar is an independent 501(c)3 non-profit entity that fosters economic opportunity by promoting solar energy. FPL objected to Vote Solar's intervention.

By Order No. PSC-2019-0285-PCO-EI, issued July 17, 2019, the Prehearing Officer issued an Order Requesting Additional Comments Concerning Motion for Intervention by Vote Solar. The Order requested additional comments from Vote Solar concerning whether Vote Solar meets the three prong associational standing test set out in *Florida Home Builders Association v. Department of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982). FPL was provided the opportunity to file any additional comments to Vote Solar's response to this Order.

On July 22, 2019, Vote Solar filed Additional Comments In Support of Its Motion to Intervene. In its filing, Vote Solar states that its members who are FPL customers will be substantially affected by this proceeding because it will determine the rates, terms, and conditions of a service offered to them by FPL. Vote Solar also states that its members who are FPL customers will be substantially affected by this proceeding, whether or not they participate in FPL SolarTogether, because the unsubscribed capacity costs will default to rate base, and thus will be borne by FPL's general body of ratepayers.

Vote Solar states that low-income solar access and community (shared) solar, program areas that Vote Solar focuses on, are directly at issue in this proceeding. Vote Solar further states that its policy experts review regulatory filings, perform technical analyses, and participate in legislative and regulatory proceedings across the country related to community solar.

Vote Solar points out that its bylaws authorize it to intervene before governmental agencies and courts to represent the interests of its members who receive residential electric service in proceedings related to its purpose. According to Vote Solar's Articles of Incorporation, one of its primary purposes is to foster economic opportunity by promoting solar energy resources. Vote Solar alleges that that it has an interest in ensuring that FPL's

SolarTogether program as approved is fair, just, and reasonable. Vote Solar states that this interest is of the type that this proceeding is designed to protect. FPL filed a response to Vote Solar's Additional Comments, maintaining that Vote Solar lacks standing to intervene for failure to identify any specific Vote Solar members who are also FPL customers.

Standards for Intervention

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. Intervenors take the case as they find it.

To have standing, the intervenor must meet the three-prong standing test set forth in *Florida Home Builders*, 412 So. 2d at 353-54, and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).¹ Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. *Fla. Home Builders*, 412 So. 2d at 353-54; *Farmworker Rights Org.*, 417 So. 2d at 754.

Based on the above representations, it appears that Vote Solar has met the associational standing requirements of *Florida Home Builders* as stated above. Vote Solar asserts that it has a substantial number of its members who are FPL customers and, as a result, those members are directly and substantially affected by the decision in this case. Further, keeping community (shared) solar programs fair, just, and reasonable is within Vote Solar's general scope of interest and is the type of relief appropriate for Vote Solar to receive on behalf of its members.

Therefore, it is

¹ Under *Agrico*, the intervenor must show that (1) he will suffer injury in fact which 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 which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. 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). See also: *Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), *rev. den.*, 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

ORDERED by Commissioner Gary F. Clark, as Prehearing Officer, that the Motion to Intervene filed by Vote Solar is hereby granted as set forth in the body of this Order. It is further

ORDERED that Vote Solar takes the case as it finds it. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding to:

Rich Zambo
Richard A. Zambo, P.A.
Fla. Bar No. 312525
2336 S.E. Ocean Boulevard, #309
Stuart, Florida 34966
richzambo@aol.com
Phone: 772-225-5400

Marsha E. Rule
Rutledge Ecenia, P.A.
Fla. Bar No. 0302066
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
marsha@rutledge-ecenia.com
Phone: 850-681-6788

By ORDER of Commissioner Gary F. Clark, as Prehearing Officer, this 31st day
of July, 2019.



GARY F. CLARK
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.