

Ruth Nettles

090109-EI

From: Richzambo@aol.com
 Sent: Monday, November 23, 2009 1:06 PM
 To: Filings@psc.state.fl.us
 Cc: steve.davis@mosaicco.com; Richzambo@aol.com
 Subject: Docket No. 090109-EI -- Mosaic Fertilizer's Petition for Leave to Intervene
 Attachments: 112309~3.PDF

This filing is made in accordance with the Commission's electronic filing procedures.

1. **Attorney responsible for this electronic filing:**

/s/ Richard A. Zambo

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2. **Docket number and title in which filing is submitted:**

Docket No. 090109-EI

In Re: Petition of Tampa Electric Company for Approval of Solar Energy Power Purchase Agreement with Energy 5.0, LLC

3. **Party on whose behalf this filing is submitted:**

Mosaic Fertilizer, LLC

4. **Total number of pages in this filing:**

6 (six) pages

5. **Document Attached:**

Petition for Leave to Intervene of Mosaic Fertilizer, LLC

If you have any questions or require anything further, please let us know immediately.

/s/ Richard A. Zambo

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Tampa Electric)
Company for Approval of Solar)
Energy Power Purchase Agreement)
with Energy 5.0, LLC)

Docket No. 090109-EI
Filed: November 23, 2009

**PETITION FOR LEAVE TO INTERVENE
OF
MOSAIC FERTILIZER, LLC**

Pursuant to Sections 120.569 and 120.57(1), Florida Statutes and Rules 25-22.039 and 28-106.205, Florida Administrative Code, Mosaic Fertilizer, LLC ("Mosaic") hereby files, through its undersigned attorney, its Petition For Leave To Intervene in the captioned proceeding. In support of its Petition, Mosaic states as follows:

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

2. The name and address of the petitioner is:

Mosaic Fertilizer, LLC
Pierce Office
5000 Old Highway 37
Mulberry, FL 33860

3. Copies of all correspondence, pleadings, and other documents should be provided to:

Richard A. Zambo
Richard A. Zambo, P.A.
2336 S.E. Ocean Blvd., #309
Stuart, Florida 34996
Phone: (772) 221 0263
FAX: (772) 283 6756

4. Mosaic received notice of this docket via counsel and the Commission's web site.

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

5. Mosaic supports renewable energy as part of a diversified electrical energy portfolio under appropriate conditions, and its intervention in this proceeding should in no way be viewed as diminishing that support. The Commission faces important issues of fact, law and policy in this proceeding, some of which are in the nature of "first impression". Because the Commission's disposition of these issues will have far reaching impacts on renewable energy producers and, most importantly, on Florida's electric consumers; and, because its substantial interests will be affected in several ways by the Commission's decision, Mosaic chooses to participate in this proceeding.

6. **Statement of affected substantial interests.** Mosaic is a manufacturer of Phosphate fertilizer products with chemical plants, mines and related operations located within Tampa Electric Company's ("TECO") service area. Mosaic purchases substantial amounts of electricity from TECO at multiple locations under a number of rate schedules.

7. Mosaic owns and operates renewable energy electric generating capacity at locations within TECO's service territory. Such facilities are electrically interconnected and operated in parallel with TECO's electric system. Mosaic consumes a portion of the renewable energy electricity it produces and sells a portion to TECO. Mosaic has the potential to develop, install and operate significant additional amounts of renewable energy electric generating capacity.

8. In this proceeding the Commission will consider TECO's request for approval of a contract for the purchase of renewable energy at costs that substantially exceeds its "avoided cost"; as well as for authorization to collect such excess costs from its retail customers. Accordingly, the Commission's decision will directly affect Mosaic by increasing the cost of electricity it purchases from TECO - thus affecting its production cost, competitive position and levels of employment.

9. In this proceeding the Commission will also consider whether the subject contract, which Mosaic understands resulted from a TECO RFP for renewable energy supply, is superior to other proposals submitted and cost-effective to TECO's customers. Importantly, Mosaic was a

participant in TECO's RFP process pursuant to which Mosaic submitted a renewable energy supply proposal and devoted substantial resources to the effort over the course of more than 12 months – primarily in the negotiation of comprehensive and detailed contract terms and conditions with TECO. Prior to execution of the contract however, TECO advised Mosaic that its proposal was not acceptable because it could result in payments in excess of TECO's avoided cost. Therefore, the Commission's decision in this proceeding will directly affect Mosaic's interests as a legitimate participant in the RFP process by – in essence – ratifying TECO's selection process and thus affecting Mosaic's rights as a good faith respondent in the competitive RFP process.

10. In this proceeding the Commission's decision will affect the financial feasibility of the construction of substantially more renewable energy electric generating capacity by Mosaic at one or more of its locations.

11. Mosaic's several interests as stated above are of precisely the type that this proceeding is designed to protect. See, *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981). The purpose of this proceeding includes evaluating TECO's request for approval of a renewable energy contract and determining if that request should be granted. The purpose of the proceeding therefore coincides with Mosaic's substantial interests, which are to ensure that the rates it pays to TECO are just, reasonable and consistent with applicable law; and, that TECO's RFP process was fair and non-discriminatory and resulted in the selection of a proposal that was the most cost-effective to TECO's customers.

12. **Disputed Issues of Material Fact.** Without waiving or relinquishing the right to allege additional disputed issues of fact at a later date, Mosaic's allegations of disputed issues of fact include the following:

- a) Is it reasonable for TECO to recover from its retail customer payments for renewable energy that exceed its avoided cost?

- b) Is it reasonable for TECO to pay for the cost of system upgrades to accommodate the renewable energy contract?
- c) Is it reasonable for TECO to include the cost of system upgrades to accommodate the renewable energy in its rate base?
- d) Is it reasonable for TECO's customers to bear all risks associated with the contract?
- e) Is the contract the most cost-effective proposal received by TECO in the RFP process?
- f) Did TECO administer the RFP process and evaluate proposals in a fair and non-discriminatory manner?
- g) Did TECO apply fair rules, screening criteria and other factors to all proposals?

13. **Disputed Legal Issues.** Without waiving or relinquishing the right to allege additional disputed issues of law at a later date, Mosaic's allegations of disputed issues of law include the following:

- a) Is approval of the contract for cost recovery within Commission jurisdiction?
- b) Is approval of system upgrades by TECO for inclusion in rate base within Commission jurisdiction?
- c) Is the Commission authorized by the Legislature to grant TECO's requests?
- d) Is the Commission authorized by its own rules to grant TECO's requests?
- e) Is the contract consistent with Florida statutes and the rules of the Commission?
- f) Was TECO's RFP process conducted consistent with applicable law?

14. **Statement of Ultimate Facts Alleged.** Without waiving or relinquishing the right to allege additional ultimate facts at a later date, Mosaic's allegations of ultimate facts include the following:

- a) TECO must demonstrate that its RFP process was fair and non-discriminatory to all respondents to the RFP and that the selected contract is the most cost-effective to TECO's ratepayers.
- b) TECO must demonstrate that inclusion of facility interconnection costs in TECO's retail customer rate base is consistent with PSC rules and Florida statutes.

15. **Rules and statutes justifying relief.** The rules and statutes that entitle Mosaic to intervene and participate as a full party in interest in this case include, but are not limited to:
- a) Section 120.569, 120.57, 366.041, 366.06, 366.051, 366.81, 366.91, and 366.92, Florida Statutes
 - b) Rules 25-22.039, 28-106.201, 28-106.205, 25-22.082, 25-17.0873, 25-17.0825, 25-17.087, 25-17.270 and 25-17.240 Florida Administrative Code.

16. **Relief sought by petitioner.** Mosaic requests that it be allowed to intervene in this proceeding as a full party in interest.

WHEREFORE, Mosaic respectfully requests that the Commission enter an Order granting its Petition for Leave to Intervene as a full party in interest the captioned proceeding.

RESPECTFULLY submitted on this 23rd day of November, 2009

/s/ *Richard A. Zambo*

Richard A. Zambo
Florida Bar No. 312525

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Attorney for: Mosaic Fertilizer, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition For Leave To Intervene has been submitted by email (*) or U.S. mail (**) on this 23rd day of November, 2009 to:

Florida Public Service Commission
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/s/ *Richard A. Zambo*

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