

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Energy conservation cost recovery
clause.

DOCKET NO. 140002-EG
ORDER NO. PSC-14-0277-PCO-EG
ISSUED: May 29, 2014

ORDER GRANTING INTERVENTION

Pursuant to Rule 25-17.051(1), Florida Administrative Code (F.A.C.), the Florida Public Service Commission (Commission) handles conservation cost recovery in the Energy Conservation Cost Recovery (ECCR) docket. By the Order Establishing Procedure, Order No. PSC-14-0085-PCO-EG, issued February 4, 2014, the hearing is scheduled for October 22-24, 2014.

Petition for Intervention

By petition, dated April 23, 2014, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively referred to as Walmart) requested permission to intervene in this proceeding. Walmart is an international retail merchant, supplying groceries and many other retail goods to millions of customers throughout the United States, including Florida. Walmart is a retail customer of all of the major electric utilities in Florida, including Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company (collectively referred to as the Utilities). In its Petition, Walmart asserts that there is a need for safe, adequate and reasonably priced electricity in Florida. Walmart also asserts that as one of the largest retail electricity consumers in Florida, its substantial interests will be impacted by the Commission's actions in this docket. No party has filed a response to Walmart's Petition, and the time for doing so has expired.

Standard for Intervention

Pursuant to Rule 25-22.039, 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 petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), 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....

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. 2nd DCA 1981). 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 prong of the test addresses the degree of injury. The second addresses the nature of the injury. 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. 3rd 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).

Analysis & Ruling

It appears that Walmart satisfies the two-prong standing test in Agrico, 406 So. 2d at 482. Walmart asserts that it is a large retail customer of the Utilities with facilities located within the Utilities' electric service territories and thus, its interests may be substantially affected by the Commission's decisions in this proceeding. Therefore, Walmart has demonstrated that it meets the two-prong standing test of Agrico, and accordingly, Walmart's petition for intervention shall be granted as set forth herein. Pursuant to Rule 25-22.039, F.A.C., Walmart takes the case as it finds it.

Based on the foregoing, it is hereby

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that Wal-Mart Stores East, LP and Sam's East, Inc.'s Petition to Intervene is hereby granted as set forth herein. 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:

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By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 29th day of May, 2014.



JULIE I. BROWN

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

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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.