

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole, by Florida Power & Light Company.

DOCKET NO. 20230017-EI
ORDER NO. PSC-2024-0186-PCO-EI
ISSUED: June 7, 2024

ORDER DENYING PETITION TO INTERVENE OF JET BLAST, INC.

Background

On January 23, 2023, Florida Power & Light Company (FPL or Company) filed a Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole. In that petition, FPL sought authority to implement an interim surcharge to recover storm restoration costs related to Hurricanes Ian and Nicole and to replenish the storm reserve to its pre-storm level. FPL also prepared an alternate storm surcharge calculation that combined the incremental restoration costs related to Hurricanes Ian and Nicole with the remaining amounts to be collected for Hurricanes Michael, Sally, and Zeta, which the Commission previously approved for recovery by Gulf Power Company,¹ and to replenish the storm reserve.

On March 23, 2023, the Commission approved an interim storm restoration surcharge based on the Company's alternative calculation.² On November 27, 2023, the Commission approved a supplemental petition filed by FPL, and decreased the surcharge to reflect an overall reduction in storm restoration costs.³ Also in November 2023, the Company filed its petition for approval of actual incremental storm restoration costs, and requested that the Commission find the final storm restoration costs to be reasonable and prudent, true-up the amount recovered with actual final costs, and address any over- or under-recovery. That petition has been scheduled for hearing to commence June 18, 2024.

On May 8, 2024, Jet Blast, Inc. (Jet Blast) filed a petition requesting intervention (Petition). On May 15, 2024, FPL filed a Response in Opposition to the Petition to Intervene of Jet Blast, Inc. (Response).

Decision

Petition to Intervene

In its May 8, 2024 Petition, Jet Blast claims that it performed two million dollars' worth of labor and services for storm recovery and restoration for FPL and its contractors in 2022. Jet Blast alleges that FPL denied its claims for compensation. Jet Blast asserts that it has a vital

¹Order Nos. PSC-2019-0221-PCO-EI; and PSC-2022-0406-FOF-EI.

²Order No. PSC-2023-0110-PCO-EI.

³Order No. PSC-2023-0354-PCO-EI.

interest in this proceeding in order to ensure that rates reflect what FPL allegedly owes to Jet Blast.

Response

In its May 15, 2024 Response, FPL denied the truth of Jet Blast's claims for compensation and further asserted that, even if the claims were true, Jet Blast failed to demonstrate standing to intervene in this proceeding. FPL asserts that Jet Blast lacks standing because Jet Blast failed to allege facts sufficient to demonstrate either an injury in fact or that the injury is of a type or nature that the proceeding is designed to protect. FPL also asserts that jurisdiction for Jet Blast's claims is appropriately with the circuit court rather than any Commission proceeding.

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 two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show that (1) he will suffer injury in fact that 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 that 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. 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).

Analysis & Ruling

Regarding the first prong of *Agrico* analysis, "a petitioner can satisfy the injury-in-fact standard set forth in *Agrico* by demonstrating in his petition either: (1) that he had sustained actual injury in fact at the time of filing his petition; or (2) that he is immediately in danger of sustaining some direct injury as a result of the challenged agency's action." *Village Park Mobile Home Ass'n*, 506 So. 2d at 433. Based on the above representations, Jet Blast fails to satisfy the injury in fact prong of *Agrico*. Jet Blast is not an FPL energy customer and is not impacted by the surcharge. Jet Blast has therefore failed to demonstrate either an actual injury or that it is in

immediate danger of sustaining some direct injury as a result of the Commission's action in this proceeding.

Jet Blast also fails to meet the second prong of *Agrico* analysis. The purpose of this proceeding is to determine FPL's claimed actual and prudently incurred storm costs and to ensure that customers pay for or receive back any under- or over-collection of these costs. Jet Blast's claims relate to purported contract damages. Because the injury it claims is not of a type or nature that this proceeding is designed to protect, Jet Blast fails to satisfy the second prong of *Agrico*. Further, even had Jet Blast pleaded that it was a customer of FPL, the Commission does not have equity jurisdiction to award damages. Having failed to meet either prong of the *Agrico* test for standing, Jet Blast, Inc.'s Petition to Intervene is denied.

It is, therefore,

ORDERED by Commissioner Art Graham, as Prehearing Officer, that Jet Blast, Inc.'s Petition to Intervene is hereby denied.

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 7th day of June, 2024.



ART GRAHAM

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.