

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Commission review of numeric conservation goals (Florida Power & Light Company).

DOCKET NO. 130199-EI

In re: Commission review of numeric conservation goals (Duke Energy Florida, Inc.).

DOCKET NO. 130200-EI

In re: Commission review of numeric conservation goals (Tampa Electric Company).

DOCKET NO. 130201-EI

In re: Commission review of numeric conservation goals (Gulf Power Company).

DOCKET NO. 130202-EI

In re: Commission review of numeric conservation goals (JEA).

DOCKET NO. 130203-EM

In re: Commission review of numeric conservation goals (Orlando Utilities Commission).

DOCKET NO. 130204-EM

In re: Commission review of numeric conservation goals (Florida Public Utilities Company).

DOCKET NO. 130205-EI  
ORDER NO. PSC-14-0153-PCO-EU  
ISSUED: April 7, 2014

ORDER GRANTING INTERVENTION

Section 366.82, Florida Statutes (F.S.), part of the Florida Energy Efficiency and Conservation Act (FEECA), requires the Commission to adopt goals to increase the efficiency of energy consumption, increase the development of demand-side renewable energy systems, reduce and control the growth rates of electric consumption and weather-sensitive peak demand, and encourage development of demand-side renewable energy resources. Pursuant to Section 366.82(6), F.S., the Commission must review a utility's conservation goals no less than every five years. FEECA is implemented by Rules 25-17.001 and 25-17.0021, Florida Administrative Code (F.A.C.). By the Order Establishing Procedure, Order No. PSC-13-0386-PCO-EU, issued August 19, 2013, Docket Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, and 130204-EM were consolidated for purposes of hearing and controlling dates were established.<sup>1</sup>

<sup>1</sup> Order No. PSC-13-0645-PAA-EU (Proxy Order), issued December 4, 2013, approved the use of a proxy methodology to establish numeric goals for both Orlando Utilities Commission (OUC) and Florida Public Utilities Company (FPUC). The Proxy Order excused OUC and FPUC from the filing and participation requirements set forth in Order No. PSC-13-0386-PCO-EU.

On February 26, 2014, Order No. PSC-14-0112-PCO-EU, modified the Order Establishing Procedure and set the hearing dates for July 21-23 and July 30-31, 2014.

### Petition for Intervention

By petition, dated March 14, 2014, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively referred to as Walmart) have 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 Florida, the United States, and the world. Walmart is a retail customer of all of the major electric utilities in Florida, including Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Company, JEA, Florida Public Utilities Company and OUC (FEECA Utilities). Walmart states that it requires adequate, reasonably priced electricity in order to serve its customers and conduct its business, as well as fair and equitable treatment with respect to its energy conservation and renewable energy initiatives.

Walmart states that, in this proceeding, the Commission will decide energy conservation goals for the FEECA Utilities. Walmart contends that as a retail customer of the FEECA Utilities, the Commission's decisions will impact Walmart's rates and determine what energy conservation measures and programs Walmart can and will use to promote energy conservation. As such, Walmart contends its substantial interests will be directly affected by the Commission's decisions in this proceeding. No party has filed an objection 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 for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 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 by 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. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 F.S. hearing, and (2) that this 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. 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 established in Agrico. Walmart asserts that is a large retail customer of the FEECA Utilities with facilities located within the utilities' electric service territories and that its substantial interests will be directly affected by the Commission's decisions on the appropriate conservation goals and programs. Based on the foregoing analysis, Walmart's standing in this proceeding has been established. Pursuant to Rule 25-22.039, F.A.C., Walmart takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Ronald A. Brisé, 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:

Robert Scheffel Wright  
John T. LaVia  
Gardner, Bist, Wiener, Wadsworth, Bowden,  
Bush, Dee, LaVia & Wright, P.A.  
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ORDER NO. PSC-14-0153-PCO-EU

DOCKET NOS. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, 130204-EM,  
130205-EI

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 7th day of April,  
2014.

/s/ Ronald A. Brisé

RONALD A. BRISE

Commissioner and Prehearing Officer

Florida Public Service Commission

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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.

TLT

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.

ORDER NO.

DOCKET NOS. 130199-EI, 130200-EI, 130201-EI, 130202-EI, 130203-EM, 130204-EM,  
130205-EI

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By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.



RONALD A. BRISE

Commissioner and Prehearing Officer  
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