

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Gulf Power Company.

DOCKET NO. 160186-EI

In re: Petition for approval of 2016 depreciation and dismantlement studies, approval of proposed depreciation rates and annual dismantlement accruals and Plant Smith Units 1 and 2 regulatory asset amortization, by Gulf Power Company.

DOCKET NO. 160170-EI
ORDER NO. PSC-17-0013-PCO-EI
ISSUED: January 4, 2017

ORDER GRANTING INTERVENTION TO
WAL-MART STORES EAST, LP AND SAM'S EAST, INC.

Pursuant to Rule 25-6.140, Florida Administrative Code (F.A.C.), on August 12, 2016, Gulf Power Company (Gulf) filed a test year letter notifying this Commission of its intent to file a petition between October 11 and October 28, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., Gulf filed its Minimum Filing Requirements and testimony on October 12, 2016. The hearing on Gulf's rate case is scheduled for March 20 through March 24, 2017.

Petition for Intervention

By petition, dated December 20, 2016, Wal-Mart Stores East, LP and Sam's East, Inc. (Walmart) has requested permission to intervene in this proceeding. Walmart states that it is an international retail merchant, supplying goods and services to millions of customers throughout Florida, the United States, and the World. Walmart currently operates 24 retail stores in Gulf's service territory. The cost of electricity is a significant element in the cost of operation for Walmart. Gulf's request for rate increases present the potential for significant increases in the cost of electricity for Walmart, and therefore, Walmart's overall operating costs. No party has filed an objection to Walmart's petition, and the time for doing so has expired.

Standards for Intervention

Rule 25-22.039, F.A.C., provides:

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. Intervenors take the case as they find it.

To have standing in an administrative proceeding, an 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); 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 meets the two-prong standing test in Agrico. Walmart’s substantial interests are affected since increases in the cost of electricity purchased from Gulf directly and significantly affect Walmart’s cost of doing business. The purpose of this proceeding is to determine the fair, just and reasonable electric rates to be charged by Gulf. Therefore, I find that Walmart meets the two-prong standing test of Agrico.

Finding that Walmart meets the two-prong standing test established in Agrico, Walmart’s petition for intervention shall be granted. 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 Commissioner Jimmy Patronis, as Prehearing Officer, that the Petition to Intervene filed by Wal-Mart Stores East, LP and Sam’s East, Inc. is hereby granted. It is further

ORDERED that the issues and testimony shall be limited to those appropriate in scope and germane to an electric rate case proceeding. 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 Jimmy Patronis, as Prehearing Officer, this 4th day
of January, 2017.



JIMMY PATRONIS
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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.