

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Tampa Electric Company.

DOCKET NO. 20200067-EI

In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Duke Energy Florida, LLC.

DOCKET NO. 20200069-EI

In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Gulf Power Company.

DOCKET NO. 20200070-EI

In re: Review of 2020-2029 Storm Protection Plan pursuant to Rule 25-6.030, F.A.C., Florida Power & Light Company.

DOCKET NO. 20200071-EI
ORDER NO. PSC-2020-0143-PCO-EI
ISSUED: May 13, 2020

ORDER GRANTING INTERVENTION
TO WALMART INC.

BY THE COMMISSION:

Section 366.96(3), F.S., requires each public utility to file a transmission and distribution storm protection plan that covers the immediate 10-year planning period, and explains the systematic approach the utility will follow to achieve the objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. Pursuant to Sections 366.96(5) and 366.96(6), F.S., every three years the Florida Public Service Commission (Commission) is required to determine whether it is in the public interest to approve, approve with modification, or deny each utility's transmission and distribution storm protection plan filed in accordance with Commission Rule.

Docket Nos. 20200067-EI, 20200068-EI, 20200069-EI, 20200070-EI, and 20200071-EI were opened to address each of the electric utilities that are subject to the requirements of Section 366.96, F.S. Docket No. 20200068-EI was closed by Order No. PSC-2020-0097-PCO-EI, issued on April 6, 2020; the remaining dockets have been consolidated for the purpose of hearing with each utility-specific filing to be filed in its respective docket. The consolidated cases will be governed by the procedures set forth in Order No. PSC-2020-0073-PCO-EI, issued March 11, 2020, as modified by Order No 2020-0122-PCO-EI issued on April 22, 2020. These dockets are currently scheduled for hearing on August 10-13, 2020.

Petitions for Intervention

By petitions dated April 29, 2020, Walmart Inc. (Walmart or Company) requests permission to intervene in each of the four dockets remaining in this proceeding. Walmart avers that it is a national retailer of goods and services with its principal office located at 2608 SE J Street, Bentonville, AR 72716. The Company asserts that it provides retail services in the State of Florida through its 231 Supercenters, 9 Discount Stores, 98 Neighborhood Markets, 46 Sam's Clubs, and 8 Distribution Centers. Walmart represents that it is a retail customer of Tampa Electric Company (TECO), Duke Energy Florida, LLC (DEF), Gulf Power Company (Gulf), and Florida Power & Light Company (FPL). The Company argues that it purchases: more than 140 million kWh annually from TECO; more than 290 million kWh annually from DEF; more than 680 million kWh annually from FPL; and more than 110 million kWh annually from Gulf. Walmart contends that the cost of electric utility service is a significant element in the cost of operation for the Company at multiple locations throughout the State of Florida, and that such costs could be impacted by the outcome in this case. Walmart asserts that it has a unique and substantial interest in this proceeding that cannot be adequately represented by any other party.

In accordance with Rule 28-106.204(3), Florida Administrative Code (F.A.C.), Walmart represents that it has conferred with the parties to this proceeding regarding the Company's petition and that all parties take no position on Walmart's intervention.

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).

Decision

Based on Walmart's representations, it appears that the Company satisfies the two-prong test established in AgriCo. Walmart's status as a large retail customer of the electric utilities who are parties to this proceeding, along with the Company's statements regarding the potential impact of the outcome of this proceeding on its cost of operation, appears to satisfy first prong of the test. Walmart's interest in the financial impact of the Commission's determination of whether proposed plans and related costs are reasonable and in the public interest appears to meet the second prong. Therefore, Walmart's standing in this proceeding has been established.

Based on the above representations, it is

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that the Petition to Intervene filed by Walmart Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Walmart Inc. takes the case as it finds it. It is further

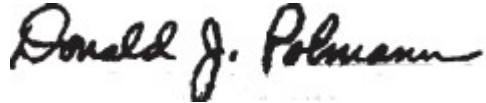
ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings, and other documents which may hereinafter be filed in this proceeding to:

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By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 13th day of May, 2020.



DONALD J. POLMANN, Ph.D., P.E.
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.

CWM

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.