

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Elsa, Eta, Isaias, Ian, Nicole, and Tropical Storm Fred, by Duke Energy Florida, LLC.

DOCKET NO. 20230020-EI  
ORDER NO. PSC-2023-0377-PCO-EI  
ISSUED: December 20, 2023

ORDER GRANTING WALMART, INC.'S  
PETITION TO INTERVENE

On January 23, 2023, Duke Energy Florida, LLC (DEF) filed a petition for a limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Elsa, Eta, Isaias, Ian, Nicole and Tropical Storm Fred. By vote at its March 7, 2023 Agenda Conference the Commission has approved DEF's request to implement an interim storm restoration recovery charge to recover \$442.1 million in incremental storm restoration costs subject to a final true-up at a later date. This docket has been set for hearing on May 21-22, 2024.<sup>1</sup>

Petition for Intervention

By petition dated March 6, 2023, Walmart, Inc. (Walmart) requested permission to intervene in this proceeding. Walmart is a national retailer of goods and services throughout the United States with its principal office located at 2608 SE J Street, Bentonville, Arkansas 72716. Walmart states that it is both a retail and commercial customer of DEF with 73 retail units, a distribution center, and related facilities located in the Company's service territory. Walmart purchases more than 280 million kWh per year from DEF and alleges that the cost of electricity is a significant element of the cost of operation for Walmart's stores and facilities in the Company's service territory which will be substantially and directly impacted by the rates set in this proceeding. Walmart represents that it has contacted the parties regarding its intervention and that no party has indicated an objection to its intervention. DEF has no objection and the Office of Public Counsel takes no position with respect to Walmart's intervention. No written objections have been filed as of this date and the time for doing so has expired.

Standard for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code, (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

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<sup>1</sup> Order No. PSC-2023-0333-PCO-EI, issued November 2, 2023, in Docket No. 20230020-EI, *In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Elsa, Eta, Isaias, Ian, Nicole, and Tropical Storm Fred, by Duke Energy Florida, LLC.*

determination or will be affected through the proceeding. Intervenor takes 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 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 has met the two-prong standing test in *Agrico*. Walmart is a commercial customer of DEF and, thus, will be substantially affected by the rates that are set 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 28-106.205, F.A.C., Walmart takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Art Graham, 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 this 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 Art Graham, as Prehearing Officer, this 20th day of December, 2023.



ART GRAHAM

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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.

SBr

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.