

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-2023-0381-PCO-EI
ISSUED: December 20, 2023

ORDER GRANTING PETITION TO
INTERVENE OF WALMART, INC.

On January 23, 2023, Florida Power & Light Company (FPL) filed a petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricanes Ian and Nicole. The Commission granted FPL's petition by Order No. PSC-2023-0110-PCO-EI, issued March 3, 2023, and approved a consolidated interim storm surcharge to cover restoration costs and to replenish the storm reserve. The Commission ordered that this docket remain open pending final disposition (true-up) of storm costs. Intervention by the Office of Public Counsel (OPC) was acknowledged by Order No. PSC-2023-0081-FOF-EI. This docket is currently set for hearing June 18-20, 2024.

Petition for Intervention

By motion 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 in Bentonville, Arkansas. Walmart states that it purchases over 750 million kWh of electricity annually from FPL for the approximately 179 retail stores, four distribution centers, and related facilities it owns and operates in FPL's service territory. Walmart further represents that because the cost of electric utility service is a significant element of its cost of operation in Florida, and the outcome of this proceeding could impact that cost, its substantial interests are affected such that it has standing to intervene. Walmart represents that it has contacted the parties regarding its intervention and that it has been authorized to represent that the parties take no position. No written objections have been filed as of this date and the time for doing so has expired.

Standards 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 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

Based on the representations in its Petition, Walmart satisfies the two-prong standing test in Agrico. As to the first prong, Walmart is a commercial customer of FPL and the rates it pays for electric utility service will be directly impacted by the storm surcharge established in this proceeding. Regarding the second Agrico prong, this docket is designed to determine the appropriate surcharge that customers such as Walmart will be required to pay. Because the allegations in its Petition satisfy the requirements of Agrico, Walmart is granted intervention 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 Commissioner Arthur Graham, as Prehearing Officer, that the Motion 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 Art Graham, as Prehearing Officer, this 20th day of December, 2023.



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.

SPS

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.