

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of approval of demand-side management plan of Florida Public Utilities Company. | DOCKET NO. 100158-EG
ORDER NO. PSC-10-0527-PCO-EG
ISSUED: August 18, 2010

ORDER GRANTING INTERVENTION

On March 30, 2010, Florida Public Utilities Company (FPUC) filed its Petition for Approval of its Demand-Side Management (DSM) Plan.

Petition for Intervention

By petition dated June 7, 2010, Wal-Mart Stores East, LP, and Sam's East, Inc., (collectively Walmart) filed a Petition to Intervene (Petition) in this docket. According to its Petition, Walmart operates numerous retail stores in Florida and is a large retail customer of FPUC.

Walmart states that in this docket, the Commission will review the DSM plan that FPUC has submitted in response to Order No. PSC-09-0855-FOF-EG, issued December 30, 2009, in Docket Nos. 080407-EG – 080413-EG. Walmart further states that FPUC's implementation plan will substantially affect Walmart by directly impacting its electric rates. 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, 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 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. 2d 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 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-

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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

It appears that Walmart meets the two-prong standing test in Agrico, 406 So. 2d at 482. Walmart is a large retail customer of FPUC with facilities located within FPUC's electric service territory, and its interests may be substantially affected by this proceeding. Therefore, Walmart's Petition shall be granted as set forth herein. 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 the Florida Public Service Commission that the Petition to Intervene filed by Wal-Mart Stores East, LP, and Sam's East, Inc., 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:

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6 N.E. 63rd Street, Suite 400
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By ORDER of the Florida Public Service Commission this 18th day of August, 2010.



ANN COLE
Commission Clerk

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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.