

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Energy Conservation Cost )  
Recovery Clause ) DOCKET NO. 140002-EI  
)  
) FILED: APRIL 23, 2014  
\_\_\_\_\_ )

**PETITION TO INTERVENE OF WAL-MART STORES EAST, LP  
AND SAM'S EAST, INC.**

Wal-Mart Stores East, LP and Sam's East, Inc. (collectively "Walmart"), pursuant to Chapters 120 and 366, Florida Statutes,<sup>1</sup> and Rules 25-22.039, 28-106.201, and 28-106.205, Florida Administrative Code ("F.A.C."), hereby petitions to intervene in the above-styled docket. In summary, Walmart is an international retail merchant, supplying groceries and many other retail goods to millions of customers throughout Florida, the United States, and the World. Worldwide, Walmart employs more than 2.2 million associates. Walmart is also a retail customer of all of the investor-owned electric utilities in Florida, including Florida Power & Light Company (FPL), Duke Energy Florida (Duke), Tampa Electric Company, and Gulf Power Company, as well as having stores in the Marianna and Fernandina Beach service areas of Florida Public Utilities Company (FPUC). Collectively, these five utilities are referred to herein as the "Public Utilities." As one of the largest retail electricity

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<sup>1</sup> All references herein to the Florida Statutes are to the 2013 edition.

consumers in Florida, Walmart's substantial interests will be determined by the Commission's actions in this docket, and accordingly, Walmart is entitled to intervene.

In further support of its Petition to Intervene, Walmart states as follows.

1. The name, address, and telephone number of the Petitioner are as follows:

Wal-Mart Stores East, LP and Sam's East, Inc.  
Attn: Kenneth E. Baker  
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Bentonville, AR 72716-0550  
Telephone (479) 204-0404  
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2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
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1300 Thomaswood Drive  
Tallahassee, Florida 32308  
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Facsimile (850) 385-5416.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

4. Walmart operates approximately 314 retail stores in Florida, including many stores served by FPL, Duke, Tampa Electric, and Gulf Power, as well as two stores served by FPUC.

Statewide, Walmart used approximately 1.5 billion kWh of electrical energy in 2013. Walmart requires adequate, reasonably priced electricity in order to serve its customers and conduct its business, as well as fair and equitable treatment with respect to its energy conservation and renewable energy initiatives.

5. Statement of Affected Interests. In this docket, the Commission will decide what energy conservation cost recovery ("ECCR") charges FPL, Duke, Tampa Electric, Gulf Power, and FPUC will be allowed to charge their respective customers in 2015. As one of the largest consumers of retail electricity in Florida, Walmart needs safe, adequate, and reasonably priced electricity in order to serve its customers and conduct its business. Additionally, Walmart is committed to energy sustainability, including energy conservation and the use of renewable energy resources. Inasmuch as these proceedings will determine the subject utilities' ECCR charges, Walmart's substantial interests will be affected by any action that the Commission takes in these proceedings.

6. Walmart's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this docket, an intervenor must demonstrate that its substantial interests will be affected or

determined by the proceedings. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect against. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Of particular relevance to this docket, Walmart is a retail customer of the Florida Public Utilities whose ECCR charges will be set by the Commission in these proceedings. Accordingly, the Commission's decisions will immediately affect Walmart's substantial interests by impacting Walmart's rates and by determining what energy conservation measures and programs Walmart will use to promote energy conservation in Florida. The interests that Walmart seeks to protect through its intervention are of sufficient immediacy to warrant intervention, and Walmart's interests in having the Commission set fair, just, and reasonable ECCR charges are exactly the interests that this proceeding is designed to protect.

8. Disputed Issues of Material Fact. Walmart believes that the disputed issues of material fact in this docket will include, but will not be limited to, the issues listed below. These issues track the issue list attached to Order No. PSC-14-0085-PCO-EG, the Order Establishing Procedure for this docket, and include an additional issue raised here by Walmart. Walmart

expects that, as in most Commission proceedings, additional issues will be identified and developed as this docket progresses.

**ISSUE 1:** What are the final conservation cost recovery true-up amounts for the period January 2013 through December 2013?

**ISSUE 2:** What are the total conservation cost recovery amounts to be collected during the period January 2015 through December 2015?

**ISSUE 3:** What are the fair, just, and reasonable conservation cost recovery factors for the period January 2015 through December 2015?

**ISSUE 4:** What should be the effective date of the new conservation cost recovery factors for billing purposes?

**ISSUE 5:** Should the Commission permit proactive customers to satisfy their energy conservation requirements by implementing, at the customer's own expense, energy conservation, demand-side management, or energy efficiency measures, or combinations thereof, and thereby be eligible to opt out of paying the energy conservation cost recovery charges applicable to other customers?

Walmart reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. The interests that Walmart seeks to protect are of sufficient immediacy to warrant intervention, and its interests in having the Commission set fair, just, and reasonable ECCR charges for the Public Utilities, are exactly the interests that this proceeding is designed to protect. Accordingly, Walmart is entitled to

intervene in this docket.

10. Statutes and Rules That Entitle Walmart to Relief. The applicable statutes and rules that entitle Walmart to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.80-366.82, Florida Statutes, and Rules 25-22.039 and 28-106.205, F.A.C.

11. Statement Explaining How the Facts Alleged By Walmart Entitle Walmart to the Relief Requested. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over the ECCR charges for the Public Utilities. The facts alleged here by Walmart demonstrate (a) that the Commission's decisions herein will determine the subject utilities' ECCR charges to be imposed and collected in 2015, in connection with meeting their conservation goals, (b) that the Commission's decisions will also determine other provisions applicable to the utilities' energy conservation and renewable energy programs and goals, and (c) that Walmart's substantial interests will be impacted and determined by the Commission's actions, including the impacts of those decisions on Walmart's rates. Accordingly, these statutes provide the basis for the relief requested by Walmart, namely intervention in this docket.

12. Statement Regarding Agency Action and Rule 28-106.201(2), F.A.C. This case involves prospective proceedings pursuant to Chapter 366, Florida Statutes, and accordingly, it does not involve reversal or modification of any action proposed by the Commission. Accordingly, Walmart believes that subsection (c) and portions of subsections (e), (f) and (g) of Rule 28-106.201(2), F.A.C., are not applicable to Walmart's petition to intervene. As set forth above, Walmart believes that, as in other ECCR dockets conducted by the Commission over the years, there will be disputed issues of material fact to be decided in this case. Walmart has identified a number of those issues in summary form and intends to take positions with respect to individual issues as appropriate, and consistent with the Order Establishing Procedure.

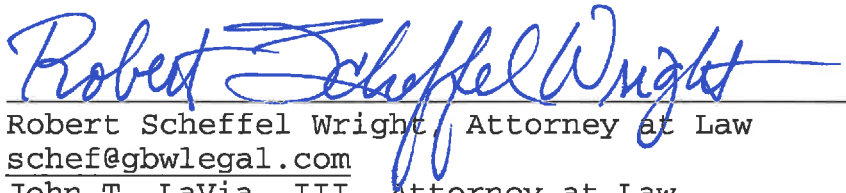
#### **CONCLUSION**

Walmart is a substantial consumer of retail electricity service in Florida, and a commercial customer of the Public Utilities, FPL, Duke, Tampa Electric, Gulf Power, and FPUC, whose ECCR charges will be determined in this docket. The interests that Walmart seeks to protect via its intervention and participation in this docket are immediate and of the type to be protected by these proceedings, and accordingly, Walmart is entitled to intervene.

**RELIEF REQUESTED**

**WHEREFORE**, Walmart respectfully request the Florida Public Service Commission to enter its order GRANTING this Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on Walmart's representatives indicated in paragraph 2 above.

Respectfully submitted this 23rd day of April, 2014.



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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic Mail this 23rd day of April, 2014 to the following:

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