

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Florida
Power & Light Company.

DOCKET NO. 160021-EI
ORDER NO. PSC-16-0134-PCO-EI
ISSUED: April 4, 2016

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

On January 15, 2016, Florida Power & Light Company (FPL) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition between March 15 and March 31, 2016, for an increase in rates effective 2017. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C. The hearing for the FPL rate case is scheduled on August 22 through September 2, 2016.

Petition for Intervention

On March 28, 2016, Wal-Mart Stores East, LP and Sam's East, Inc. (Walmart), filed its Petition to Intervene (Petition). Walmart states that it is a national retailer of goods and services throughout the United States with its principal office located in Bentonville, Arkansas. Walmart currently operates 223 Supercenters, 10 Discount Stores, 75 Neighborhood Markets, 48 Sam's Clubs, and 8 Distribution Centers in Florida, purchasing more than 650 million kWh annually from FPL pursuant to Schedules GSLDT-1, GSDT-1, SDTR, GSD-1, and HLFT. The cost of electricity is a significant element in the cost of operation for Walmart. FPL's request for rate increases spanning the time period 2017 through 2019 present the potential for significant increases in the cost of electricity for Walmart, and therefore, Walmart's overall operating costs.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 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 through the proceeding....

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. 2nd 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) this 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

Based upon a review of the materials provided by Walmart it appears that Walmart meets the two-prong standing test in Agrico. Walmart’s substantial interests are affected since increases in the cost of electricity purchased from FPL directly and significantly affect its production costs, competitive posture and levels of employment. This proceeding is to determine the just and reasonable electric rates to be charged by FPL. Therefore, Walmart meets the two-prong standing test of Agrico.

Because Walmart meets the two-prong standing test established in Agrico, Walmart’s petition for intervention shall be granted. 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 Commissioner Lisa Polak Edgar, as Prehearing Officer, that the Petition to Intervene filed by Wal-Mart Stores East, LP and Sam’s East, Inc., is hereby granted as set forth in the body of this Order. 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 Lisa Polak Edgar, as Prehearing Officer, this 4th day
of April, 2016.



LISA POLAK EDGAR
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.

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.