

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Storm Protection Plan,
pursuant to Rule 25-6.030, F.A.C., Duke
Energy Florida, LLC.

DOCKET NO. 20220050-EI
ORDER NO. PSC-2022-0216-PCO-EI
ISSUED: June 17, 2022

ORDER GRANTING PETITION TO INTERVENE
FILED BY WALMART INC.

On March 9, 2022, Docket No. 20220050-EI was established to review Duke Energy Florida, LLC's (DEF) transmission and distribution storm protection plan pursuant to Section 366.95(5), Florida Statutes (F.S.). By the Order Establishing Procedure and Consolidating Dockets, Order No. PSC-2022-0119-PCO-EI, issued on March 17, 2022, this docket was consolidated for the purpose of the hearing with Docket Nos. 20220048-EI, 20220049-EI, and 20220051-EI, and controlling dates were established. The dockets are currently scheduled for hearing from August 2, 2022, through August 4, 2022.

Petition for Intervention

By motion dated May 31, 2022, Walmart Inc. (Walmart) filed its Petition to Intervene. Walmart alleges that any decisions made by the Commission regarding rate recovery of the costs associated with any programs and projects that are approved in DEF's storm protection plan will directly impact the cost of power supplied by DEF to Walmart's facilities in Florida, thereby affecting its production and operating costs, overall industry competitiveness, and level of sustainable employment in the region. No other party has an objection to Walmart's intervention in this matter.

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. *See 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 above representations, Walmart meets the first prong of *Agrico* in that the amount it pays in electric rates may ultimately be affected by this proceeding. In addition, Walmart meets the second prong of *Agrico* because: (1) the purpose of this proceeding is to determine whether it is in the public interest to approve, approve with modification, or deny DEF's transmission and distribution storm protection plan; (2) in turn, such decisions will affect the scope of the cost recovery DEF may seek pursuant to Section 366.96(7), F.S.; and finally (3) the scope of such cost recovery will determine the rates paid by ratepayers such as Walmart. Based on the foregoing, Walmart meets both prongs of *Agrico* and has standing to intervene.

Based on the above representations, it is

ORDERED by Commissioner Mike La Rosa, 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 Mike La Rosa, as Prehearing Officer, this 17th day of June, 2022.



Mike La Rosa
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.

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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.