

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

Filed: May 15, 2024

FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO THE PETITION TO INTERVENE OF JET BLAST, INC.

Pursuant to Rule 28-106.205(1), Florida Administrative Code ("F.A.C."), Florida Power & Light Company ("FPL") hereby submits its response ("Response") in opposition to the Petition to Intervene ("Petition") filed by Jet Blast, Inc. ("Jet Blast"). In support FPL states:

I. Introduction and Background

1. On January 23, 2023, FPL filed a petition in the above-captioned docket for approval to implement storm restoration charges to recover an initial estimate of \$1.3 billion for the incremental storm restoration costs related to Hurricanes Ian and Nicole and to replenish the storm reserve. In that same filing, FPL also presented an alternate Consolidated Interim Storm Restoration Recovery Charge ("Interim Storm Charge") to recover an initial estimate of \$1.5 billion. This alternate calculation combined the incremental restoration costs related to Hurricanes Ian and Nicole with the remaining amounts to be collected for Hurricanes Michael, Sally, and Zeta, which were previously approved for recovery by Gulf Power Company, and to replenish the storm reserve.

2. On March 23, 2023, the Commission issued Order No. PSC-2023-0110-PCO-EI approving the alternate Interim Storm Charge and recovery of the estimated \$1.5 billion of combined incremental storm restoration costs and to replenish the storm reserve. The Interim

Storm Charge was approved for a twelve-month recovery period of April 2023 through March 2024, subject to true-up once the final total actual consolidated storm costs were known.

3. On September 5, 2023, FPL filed a supplemental petition requesting a reduction to the Interim Storm Charge to reflect a decrease in the estimated incremental storm restoration costs. The proposed reductions sought to lessen the amount collected under the Interim Storm Charge from \$1.5 billion to \$1.3 billion.

4. On November 17, 2023, FPL filed a petition with the Commission requesting, among other things, that the Commission find its restoration costs associated with Hurricanes Ian and Nicole to be reasonable and prudent. In support, FPL filed the testimonies and exhibits of FPL witnesses Michael Jarro, Amber De Lucenay, Keith Ferguson, and Tiffany C. Cohen.

5. On November 27, 2023, the Commission approved FPL's supplemental petition in Order No. PSC-2023-0354-PCO-EI. In that Order, the Commission indicated that the task remaining in the docket was to determine FPL's actual, prudent and reasonable storm costs, and compare that amount to the amount recovered through the Interim Storm Charge to determine whether any over/under recovery has occurred. Order No. PSC-2023-0354-PCO-EI at 2. The Commission also stated that it would consider the disposition of any over/under recovery and associated interest. *Id.*

6. On December 14, 2023, the Commission issued its Order Establishing Procedure, setting, among other milestones, March 15, 2024 as the intervenor testimony deadline, May 3, 2024 as the rebuttal testimony deadline, May 31, 2024 as the discovery deadline, and June 18-20, 2024 as the hearing dates. *See* Order No. PSC-2023-0372-PCO-EI at 11.

7. On May 8, 2024, Jet Blast, a Texas corporation, filed the Petition, claiming to have unpaid storm restoration invoices in excess of \$2 million for which remuneration is due. Petition

at 2, Paragraphs 5, 7. The Petition, filed by a non-Florida bar member who has not sought qualification pursuant to Rule 28-106.106, F.A.C.,¹ did not include a statement concerning conferral as required by Rule 28-106.204, F.A.C.

8. In its Petition, Jet Blast claims FPL and “other parties” owe it money for hurricane restoration work. Petition at 3, Paragraph 9(a). Notably, Jet Blast does not aver that it is a customer of FPL or that it was otherwise subject to or paying the Interim Storm Charge approved by Commission Order Nos. PSC-2023-0110-PCO-EI and PSC-2023-0354-PCO-EI.

9. Counsel for Jet Blast served its Petition on FPL’s counsel and other non-participants in the proceeding via email dated May 8, 2024 (the “May 8, 2024 Email”), which is attached to this Response as Attachment A. Therein, Jet Blast’s counsel indicated Jet Blast looked forward to having “an efficient resolution to this long-outstanding debt.” The subject line of the email reads “URGENT - NOTICE OF NONPAYMENT, DEMAND FOR PAYMENT AND NOTICE OF Fla. PSC INTERVENTION - Winch Law Firm obo Jet Blast Inc.” Other than FPL, the parties in receipt of the May 8, 2024 Email are not parties to this docket, but rather are parties from which Jet Blast is seeking payment.²

10. The May 8, 2024 Email also included a demand letter (“Demand Letter”), which is attached to this Response as Attachment B. Therein, counsel for Jet Blast indicated its intent to intervene in this docket at the Florida Public Service Commission (“Commission”) and “file suit

¹ According to Rule 28-106.106(2)(b), F.A.C., “A party seeking representation by a qualified representative shall file a written request with the presiding officer as soon as practicable, but no later than any pleading filed by the person seeking to appear on behalf of the party.” Justin L. Winch, Esq., counsel for Jet Blast is not a member of the Florida bar, and therefore, in accordance with Rule 28-106.106, was required to file a written request with the Prehearing Officer no later than the time of filing the Petition. Mr. Winch did not do so, and instead merely asserted that he may file a *pro hac vice* motion at a later time. Petition at 1-2, Paragraph 3.

² Jet Blast’s Petition does not appear to have been properly served on Commission Staff or the other parties to this docket as required by Rule 28-106.110, F.A.C.

to collect on [the \$2 million] debt”. Demand Letter at 2. Specifically, Jet Blast openly stated in its Demand Letter that “[s]hould [Jet Blast] be forced to file suit to collect on this debt, [Jet Blast] will immediately intervene and assert our allegations before the Public Service Commission.” Demand Letter at 2.

11. The averments made by Jet Blast clearly demonstrate that the relief it is seeking in this Commission docket is financial remuneration. Those averments include the following:

- Petition at 2, Paragraph 5 – Jet Blast alleges that labor and services performed by Jet Blast were not compensated.
- Petition at 2, Paragraph 7 – Jet Blast alleges it has unpaid invoices in excess of \$2 million for work performed and accepted by FPL and others.
- Petition at 3, Paragraph 9(a) – Jet Blast alleges that “FPL and other parties” have not paid out certain monies.
- Petition at 3, Paragraph 10 – Jet Blast asserts that it was “grossly negligently denied remuneration.”
- Petition at 3-4, Paragraph 11 – Jet Blast alleges “gross negligence with which its submitted invoices were rejected by FPL and/or other responsible parties” and that it was “wrongfully denied remuneration”.
- Demand Letter at 1-3 – Jet Blast repeatedly references monies owed and threatens to intervene at the Commission if monies remain unpaid.
- May 8, 2024 Email – Jet Blast indicates that it looks forward to having “an efficient resolution to this long-outstanding debt.”

12. Even accepting Jet Blast’s averments as true, which FPL denies, Jet Blast has failed to allege facts sufficient to demonstrate it has standing to intervene in this proceeding. Moreover,

Jet Blast's claims and requests for relief are beyond the subject matter jurisdiction of this Commission and Chapter 366 of the Florida Statutes. Finally, Jet Blast's averments and statements clearly indicate that its intervention in this proceeding is for improper purposes wholly unrelated to the purpose and scope of this proceeding. For these reasons, as further explained below, Jet Blast's Petition should be denied.

II. Jet Blast has Failed to Demonstrate Standing to Intervene in this Proceeding

A. Standard for Intervention

13. Pursuant to Rule 28-106.205, 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.

14. To have standing to intervene in this proceeding, Jet Blast must meet the two-prong standing test set forth in *Agrico Chemical Co. v. Dept. of Env'tl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Specifically, it must show that (1) it will suffer injury in fact that is of sufficient immediacy to entitle 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. *Id.* The "injury in fact" must be both real and immediate and not speculative or conjectural. *Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n*, 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).

15. Accordingly, Jet Blast has the burden to allege facts sufficient to demonstrate and meet each of the two prongs required to establish standing. For reasons explained below, Jet Blast has failed to meet that burden and its Petition should be denied.

B. Jet Blast Fails to Establish an “Injury in Fact”

16. Jet Blast’s Petition fails to demonstrate an “injury in fact,” the first requirement under *Agrico*. Likewise, Jet Blast has failed to articulate an injury that is redressable by the Commission or pertinent to the issues in the proceeding.

17. As described above, the purpose of this proceeding is to determine FPL’s actual and prudently incurred storm costs and to make sure FPL recovers those costs, and no more, from its customers. In other words, the function of this proceeding is to protect the interests of FPL and its customers. Jet Blast, however, has not made any averment in its Petition that it is an FPL customer or has paid any component of the Interim Storm Charge.

18. Instead, Jet Blast alleges that the outcome of this case “could” impact its ability to recoup monies it feels it is owed. Petition at 2, Paragraph 7. Even if this allegation were taken as true, which FPL submits it is not, there is no possible outcome that will result in Jet Blast obtaining payment, which is its expressly intended goal. Therefore, Jet Blast has not, and will not, be affected by the outcome of the proceeding, and cannot be said to be at risk of an “injury in fact” related to the proceeding.

19. Moreover, Jet Blast avers that the invoices for the alleged monies owed were rejected. Petition at 6, Paragraph 11. Therefore, by its own admission, the monies Jet Blast claims

it is owed are not included in the storm recovery amount that FPL was previously approved to recover in Order Nos. PSC-2023-0110-PCO-EI and PSC-2023-0354-PCO-EI.³

20. Accordingly, for the foregoing reasons, Jet Blast has failed to allege facts sufficient to establish an “injury in fact” as required by the first prong of the *Agrico* test for standing.

C. Jet Blast’s Alleged Interests Are Not of a Type of Nature Which This Proceeding is Designed to Protect

21. Even if, *arguendo*, Jet Blast could satisfy the first *Agrico* prong, Jet Blast’s Petition entirely fails to demonstrate that the alleged injury is the type of injury against which the proceeding is designed to protect as required by the second prong of the *Agrico* test for standing. *Agrico*, 406 So. 2d at 482. As stated earlier, the purpose of this proceeding is to ensure customers pay the actual, prudently incurred storm costs and pay for or receive back any under- or over-collection. Again, Jet Blast does not claim to be an FPL customer or pay FPL customer rates.

22. Jet Blast’s interest in recuperating payment in relation to a private contractual dispute is far removed from the purpose of this proceeding. Jet Blast’s attempt to clear the hurdle to intervention by claiming to have an interest in the invoice review process and FPL’s cost allocation and rate design (Petition at 3-4, Paragraphs 9, 11) is farcical. Jet Blast’s claim that it has an interest in FPL’s invoice review, cost allocation, and rate design is of no legal significance due to Jet Blast’s lack of standing. These feigned interests are instead a plain attempt to gain access to the proceeding in order to push FPL, or another entity outside of the proceeding, to settle a contractual dispute. As discussed above, the Petition, Demand Letter, and May 8, 2024 Email

³ Ostensibly, if Jet Blast were to prevail in showing that an additional \$2 million should have been included in that amount, that would mean FPL *underrepresented* the storm costs appropriate for recovery and the customer surcharge should have been greater. FPL asserts that customers need not be responsible for any more than the amounts supported by the evidence already submitted in this proceeding.

make clear that Jet Blast’s desire to participate in this docket is solely tied to its own financial remuneration. This, plainly, is not the interest that the proceeding was designed to protect, and Jet Blast’s Petition therefore soundly fails the second *Agrico* prong.

23. While Jet Blast alleges that it is owed monies for work performed, that is not a condition that can be addressed through this docket since, as is detailed below, it is not the province of agencies such as the Commission to award money damages. *See Winter Springs Dev. Corp. v. Fla. Power Corp.*, 402 So. 2d 1225, 1228 (Fla 5th DCA 1981) (“the Public Service Commission is not authorized to award money damages....”). For that reason, Jet Blast’s allegation in its Petition that it has “substantial and vital interests in the outcome of this proceeding” (Petition at 2, Paragraph 8) misapprehends the purpose of the proceeding, which is to determine FPL’s actual and prudently incurred storm costs and to make sure FPL recovers those costs, and no more, from its customers.

24. Further, not only is Jet Blast’s desired relief inappropriate for this proceeding, it is inappropriate for *any* Commission proceeding. Although the Commission has regulatory authority over the rates and services pursuant to Chapter 366, Florida Statutes, the Commission does not have the legal authority to award relief in the form of monetary damages. *See Winter Springs Dev. Corp.*, 402 So. 2d at 1228. The determination of legal liability and the award of money damages is, instead, within the jurisdiction of the circuit court pursuant to Art. V, §5(b), Fla. Const. Therefore, Jet Blast’s desire to obtain payment of damages does not represent an interest that is before the Commission, here or in any other proceeding before the Commission.

25. Even if Jet Blast can assert some form of interest in the outcome of the proceeding, an interest alone is not enough for standing to be conferred. As the Commission has recognized, “the mere desire to be heard on an issue that interests a putative intervenor does not confer standing

to intervene.” Order No. PSC-2021-0126-PCO-EI at 5, issued on April 12, 2021 in Docket Nos. 20190110-EI, 20190222-EI, and 20210016-EI. Thus, even if Jet Blast could articulate an interest in the proceeding that is tied to the issues in the case, it does not follow that it has standing to intervene. Standing must be shown under *Agrico*, which is something Jet Blast cannot do.

26. Were Jet Blast to be granted intervention, that permission would encourage other contractors, and subcontractors, to intervene in future proceedings – storm recovery and otherwise – to improperly seek to apply pressure on a utility, or others, to submit payment for services. FPL respectfully submits that such a strategy should not be encouraged.

CONCLUSION

27. Jet Blast’s Petition, by its own admissions, does not identify an injury that is redressable or protectable in this proceeding, the purpose of which is to determine FPL’s actual, prudent and reasonable storm costs, and ensure customers pay that amount. Jet Blast therefore fails to demonstrate its standing to intervene in this proceeding.

WHEREFORE, for the reasons expressed herein, FPL respectfully requests that the Commission deny Jet Blast’s Petition to Intervene.

Respectfully submitted this 15th day of May 2024.

By: s/ Joel T. Baker
Christopher T. Wright, Managing Attorney
Fla. Auth. House Counsel No. 1007055
Joel T. Baker, Principal Attorney
Fla. Bar No. 0108202
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420
Email: christopher.wright@fpl.com
Email: joel.baker@fpl.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copies of the foregoing have been furnished by Electronic Mail to the following parties of record this 15th day of May 2024:

<p>Shaw Stiller Daniel Dose Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 ddose@psc.state.fl.us ssiller@psc.state.fl.us <i>For Commission Staff</i></p>	<p>Office of Public Counsel Patricia A. Christensen c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 rehwinkel.charles@leg.state.fl.us christensen.patty@leg.state.fl.us <i>For the Office of Public Counsel</i></p>
<p>Stephanie U. Eaton Florida Bar No.: 165610 SPILMAN THOMAS & BATTLE, PLLC 110 Oakwood Drive, Suite 500 Winston-Salem, NC 27103 seaton@spilmanlaw.com <i>For Walmart Inc.</i></p>	<p>Derrick Price Williamson Steven W. Lee SPILMAN THOMAS & BATTLE, PLLC 1100 Bent Creek Boulevard, Suite 101 Mechanicsburg, PA 17050 dwilliamson@spilmanlaw.com slee@spilmanlaw.com <i>For Walmart Inc.</i></p>
<p>Justin L. Winch, Esq., Winch Law Firm, LLC, 404 Stafford Place New Orleans, LA 70124 justin.winch@winchlawfirm.com <i>For Jet Blast, Inc.</i></p>	

s/ Joel T. Baker
Joel T. Baker
Fla. Bar No. 0108202

Attorney for Florida Power & Light Company

Attachment A

Baker, Joel

From: Justin Winch <justin.winch@winchlawfirm.com>
Sent: Wednesday, May 8, 2024 6:32 PM
To: Jr Edge; daniel frankfurt; Rigby M; JimBo Campbell; Wright, Christopher; Baker, Joel; Moncada, Maria
Subject: URGENT - NOTICE OF NONPAYMENT, DEMAND FOR PAYMENT AND NOTICE OF Fla. PSC INTERVENTION - Winch Law Firm obo Jet Blast Inc.
Attachments: 240508_Demand Letter to blue lake services and FPL_ Jet Blast.pdf; Petition for Intervention fpl_Jet Blast.pdf; 240508_Jet Blast Open Account Demand Support.pdf
Importance: High

Caution - Suspicious External Email (justin.winch@winchlawfirm.com)

Report this Email

Quick response

Emergency response

Why is this email suspicious?

Tips

Dear All,

This communication has two parts. The first, is directed solely to Counsel for Florida Power and Light Co. The second part is directed to all that this email is addressed to, and as set forth in the attached demand.

I.

Regarding the Attached Petition for Intervention,

Dear Ms. Moncada, Mr. Baker and Mr. Wright,

Please see the Petition for Intervention filed today. In satisfying my duties set forth in 28-106.204, to attempt to confer relative to the Intervention, do you object to my client Jet Blast, Inc.'s Intervention?

If you do, please provide with particularity on what grounds. In addition, and further, please begin preserving, and then providing to me any and all documents, data, metadata and information in whatever format it may exist, relative to services performed by my client Jet Blast, Inc. A listing of the invoices submitted, services rendered, and describing the work-sites or nature of the invoice, is set forth in the attached spreadsheet.

II.

Regarding the attached Demand for Payment on Open Account, and/or pre-suit demand for payment for services rendered and accepted,

Dear All,

Please see the attached amicable demand, and enclosed supporting documentation. Please be advised to preserve and prevent the destruction or loss of any and all communications evidencing your knowledge of and/or specific requests for the work performed by my client, and reflected in the attached invoice listing; this includes but is not limited to any communication, information or documentation that contains or references the location names as listed in the attached spreadsheet, or my client "Jet Blast, Inc." or the work performed. Please further provide to my office, any and all information or documentation referring to or referencing my client, the work sites set forth in the attached spreadsheet, or any information or data reflecting any of the same. If you maintain that any of the information is proprietary or confidential, please so state.

I look forward to hearing from you all, and having an efficient resolution to this long-outstanding debt, for my client. I can be reached directly at 504-214-3400.

Justin

Sincerely,

A handwritten signature in black ink, appearing to read "Justin L. Winch".

Justin L. Winch, Esq.

504.214.3400 Phone

504.389.4900 Fax

justin.winch@winchlawfirm.com Email

Attachment B



Justin L. Winch, Esq.
justin.winch@winchlawfirm.com
Phone: 504-214-3400

May 8, 2024

To: Florida Power & Light Company
Through their Assistant General Counsel
Maria Jose Moncada
maria.moncada@fpl.com
And Principal Attorney
Joel Baker joel.baker@fpl.com
700 Universe Boulevard
Juno Beach, Florida 33408-0420

And/OR

Daniel Frankfurt
600 Grand Blvd. Suite 201
Destin, FL 32550

And/OR

Jonathan Rigby McMillan
812 Jay Villa Road
Evergreen, AL 36401

And/Or

Blue Lake Service, LLC
8900 Waring Road
Pensacola, FL 32534

And/OR

Daniel W. McMillan
329 Belleville Ave.
Brewton, AL 36426

And/OR

MO Equipment LLC
Marshall Perkins
6050 South 4080 Rd
Talala, OK 74080

Re: *Jet Blast, Inc. v. Blue Lake Service, LLC, et al.*
Amount Due: \$2,081,212.34

Sent Via U.S. Certified Mail,
Parcel Number _____
& U.S. First Class Mail
& Email, receipt requested

Dear Blue Lake Service, LLC and MO Equipment, LLC, and Florida Power & Light Company,

My firm has been retained to enforce obligations to pay your indebtedness, whether contractual or legal by way of unjust enrichment or other legal theories, to my client Jet Blast, Inc., for

404 Stafford Place | New Orleans, LA 70124 | Tel: 504-214-3400 |

WWW.WINCHLAWFIRM.COM

goods and services received and accepted by you, for Hurricane recovery/restoration work from approximately October – December 2022, including incurring overhead and equipment costs, labor costs and opportunity costs. All of this work was requested by you, performed with your full knowledge, and you have thus far unjustly enriched yourselves, by receiving goods and services and other items of value, and making no reasonable attempts to pay for them. Worse, misrepresentations and omissions have been made, to my client and to the public through the public service commission, all while this debt remains not honored by you. This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Furthermore, your choice to ignore this demand, will result in your being sued and liens placed upon your property and assets, in all states in which you hold property or attempt to operate. Further, we will pursue the directors and officers and all others conspiring to unjustly enrich yourselves, at the expense and great detriment of your creditor Jet Blast, Inc.

YOU SHOULD BE ADVISED that upon information and belief, and the undeniable circumstances, you have known of the existence of this obligation to pay, and the underlying facts, since the work was performed, and that accordingly misrepresentations and/or omissions of fact, have been made before the Florida Public Service Commission, in order to advance your interests in Docket No. 20230017-EI. Should we be forced to file suit to collect on this debt, we will immediately intervene and assert our allegations before the Public Service Commission.

RECAPITULATION:

Original balance, due and owing: \$2,081,212.34

*Judicial interest charges on open balance is accruing at approx. \$498.92 daily.

Due, if paying in full under agreed-upon terms, within 15 days: \$2,088,696.14

If payment and terms not agreed-upon within 15 days, the following additional costs and charges begin to accrue:

- Attorneys' fees as necessitated by failure to repay debt and as ordered by a Court;

- Court costs of \$2,000.00¹
- Pursuant to La. R.S. 9:2784, we will also assess you with a penalty equal to 15% of the amount owed -- \$312,181.85

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within fifteen (15) days from your receipt of this letter, established by read-receipt of an email, or the fax confirmation or Certified Receipt, we will file suit immediately.

You should be aware, that attempts to strip assets or engage in any type of prohibited and fraudulent transfers in order to avoid liability, will result in our naming the Directors and Officers and their insurers, in the suit to recover on these debts.

Please contact my office immediately, to make arrangements, and prevent our filing suit, which will result in liens against your assets, judgments, garnishments, and other means of collecting the amounts you owe.

We look forward to being contacted by you and your satisfying this obligation.

Sincerely,
WINCH LAW FIRM, LLC



JUSTIN L. WINCH, ESQ.
404 Stafford Place
New Orleans, LA 70124
Justin.winch@winchlawfirm.com
Direct dial: 504-214-3400

¹ in accordance with Louisiana Revised Statute Ann sec. 9:2781