

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm protection plan cost recovery  
clause.

DOCKET NO. 20210010-EI  
ORDER NO. PSC-2021-0193-PCO-EI  
ISSUED: May 26, 2021

ORDER GRANTING PETITION TO INTERVENE  
FILED BY WALMART INC.

This docket has been opened pursuant to Subsection 366.96(7), Florida Statutes (F.S.), which requires the Commission to conduct an annual proceeding to determine an electric investor-owned utility's prudently incurred transmission and distribution storm protection plan costs and allow the utility to recover such costs through a charge separate and apart from its base rates, to be referred to as the storm protection plan cost recovery clause. If the Commission determines that costs were prudently incurred, those costs will not be subject to disallowance or further prudence review except for fraud, perjury, or intentional withholding of key information by the public utility. This matter has been scheduled for an administrative hearing beginning August 3, 2021.

The following five utilities were named as original parties when this docket was opened:

1. Florida Power & Light Company
2. Gulf Power Company
3. Tampa Electric Company
4. Duke Energy Florida, LLC
5. Florida Public Utilities Company

As set forth in the Order Establishing Procedure,<sup>1</sup> any person not listed immediately above who wishes to intervene as a party must file a Petition to Intervene in accordance with Rule 28-106.205, Florida Administrative Code (F.A.C.).

Petition for Intervention

On March 12, 2021, Walmart Inc. (Walmart or Company) filed a Petition to Intervene in this proceeding. Walmart avers that it is a national retailer of goods and services with its principal office located at 2608 SE J Street, Bentonville, AR 72716. The Company asserts that it provides retail services in the State of Florida through its 231 Supercenters, 9 Discount Stores, 98 Neighborhood Markets, 46 Sam's Clubs, and 8 Distribution Centers. Walmart represents that it is a retail customer of Tampa Electric Company, Duke Energy Florida, LLC, Gulf Power Company, and Florida Power & Light Company (the Electric Utilities). The Company states that it collectively purchases more than 1.202 billion kWh<sup>3</sup> annually from the Electric Utilities. Walmart contends that the cost of electric utility service is a significant element in the cost of operation for the Company at multiple locations throughout the State of Florida, and that such costs could

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<sup>1</sup> Order No. PSC-2021-0083-PCO-EI, issued February 17, 2021.

be impacted by the outcome in this case. Walmart asserts that it has a unique and substantial interest in this proceeding that cannot be adequately represented by any other party.

In accordance with Rule 28-106.204(3), F.A.C., Walmart represents that it has conferred with the parties to this proceeding regarding the Company's petition and that all parties take no position on Walmart's intervention. No party has filed a response to Walmart's Petition to Intervene, and the time for doing so has expired.

### Standards for Intervention

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. 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. 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 and Ruling

Walmart meets the first prong of Agrico in that the amount it pays in electric rates and, in turn, its costs of operation may be affected by this proceeding. Walmart meets the second prong of Agrico because the purpose of this proceeding is to consider the Electric Utilities' recovery of costs associated with storm protection plans through the implementation of rates. Based on the foregoing, Walmart meets both prongs of Agrico. Accordingly, Walmart's petition for intervention shall be granted as set forth herein. Pursuant to Rule 28-106.205, F.A.C., Walmart takes the case as it finds it.

Based upon the foregoing, it is

ORDERED by Commissioner Andrew Giles Fay, as Prehearing Officer, that the Motion to Intervene filed by Walmart Inc. (Walmart) 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 Andrew Giles Fay, as Prehearing Officer, this 26th day of May, 2021.



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ANDREW GILES FAY  
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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.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Subsection 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.