

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Michael and approval of second implementation stipulation, by Duke Energy Florida, LLC.

DOCKET NO. 20190110-EI

In re: Petition for limited proceeding for recovery of incremental storm restoration costs related to Hurricane Dorian and Tropical Storm Nestor, by Duke Energy Florida, LLC.

DOCKET NO. 20190222-EI

In re: Petition for limited proceeding to approve 2021 settlement agreement, including general base rate increases, by Duke Energy Florida, LLC.

DOCKET NO. 20210016-EI
ORDER NO. PSC-2021-0149-PCO-EI
ISSUED: April 22, 2021

ORDER GRANTING WALMART INC.'S PETITION TO INTERVENE

On January 14, 2021, Duke Energy Florida, LLC (DEF) filed a petition for a Limited Proceeding asking this Commission to approve the 2021 Settlement Agreement between DEF, the Office of Public Counsel (OPC), the Florida Industrial Power Uses Group (FIPUG), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS Phosphate), and Nucor Steel Florida, Inc. (NUCOR) (collectively, Signatories). The 2021 Settlement Agreement includes general base rate increases, resolves all issues in Docket Nos. 20190110-EI and 20190222-EI, clarifies certain cost allocation and rate design matters pertaining to DEF's Storm Protection Plan Cost Recovery Clause, and authorizes a new EV Program.

As a result of the approval of the 2017 Second Revised and Restated Settlement Agreement by Order No. PSC-2017-0451-AS-EU,¹ DEF was authorized to implement an EV Charging Station Pilot Program (2017 EV Pilot). In the 2021 Settlement Agreement, the Signatories agreed that DEF should be authorized to continue operation and recovery of costs of the charging stations that were installed pursuant to the 2017 EV Pilot, and to implement three new EV programs, as further described in Paragraphs 17(a) through (c) of the 2021 Settlement Agreement. Consideration of the 2021 Settlement is currently scheduled for hearing on May 4, 2021.

¹ Order No. PSC-2017-0451-AS-EU, issued November 20, 2017, in Docket Nos. 20170183-EI, 20100437-EI, 20150171-EI, 20170001-EI, 20170002-EG, and 20170009-EI, *In re: Application for limited proceeding to approve 2017 second revised and restated settlement agreement, including certain rate adjustments, by Duke Energy Florida, LLC.*, *In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.*, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc., d/b/a Duke Energy*, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, *In re: Energy conservation cost recovery clause*, and *In re: Nuclear cost recovery clause*.

On April 13, 2021, Walmart Inc. (Walmart) requested permission to intervene in this proceeding. Walmart represents in its petition that it conferred with the signatories to the settlement, and none indicated an objection to Walmart's intervention. No written response to Walmart's petition has been received, and the time for doing so has expired.

Petition for Intervention

By Petition dated April 13, 2021, Walmart states that it is DEF's retail customer who takes service from the utility through 73 retail units and one distribution center. Walmart purchases more than 290 million kWh annually from DEF. Although it does not oppose the proposed 2021 Settlement Agreement, Walmart asserts that it could be impacted by the outcome of this case, and thus has a substantial interest in this docket. As such, Walmart contends approval of the 2021 Settlement Agreement will directly impact the cost of power supplied by DEF to Walmart's facilities located in DEF's territory, thereby affecting its operating costs. After reviewing the 2021 Settlement Agreement, and associated minimum filing requirements related to its facilities in DEF's territory, Walmart does not oppose the approval of the 2021 Settlement Agreement.

Standard 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. *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

Based on the above representations, it appears that Walmart has met the two-prong standing test in *Agrico*. Walmart is a retail customer of DEF, and Walmart's interests may be substantially affected by this proceeding. 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 on the foregoing, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that the Petition 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 22nd day of April, 2021.



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.