

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement
regarding Rule 25-6.049, F.A.C., by 1150
WHG, LLC.

DOCKET NO. 20230128-EU
ORDER NO. PSC-2023-0360-PCO-EU
ISSUED: November 28, 2023

ORDER GRANTING MOTION TO INTERVENE

On November 8, 2023, 1150 WHG, LLC (WHG) filed a Petition for Declaratory Statement (Petition) requesting that the Florida Public Service Commission (Commission) issue a declaratory statement determining whether its property qualifies for the “grandfather exception” in Rule 25-6.049, Florida Administrative Code (F.A.C.). On November 21, 2023, Tampa Electric Company (TECO) timely filed a Motion to Intervene (Motion) pursuant to Rule 28-105.0027, F.A.C. TECO alleges the Commission decision in this docket will affect and determine its substantial interests and wishes to file written comments on the Petition.

TECO is the utility company providing electric service to the property at issue. TECO states it is concerned about its ability to provide safe and reliable electric service to the property, while complying with Florida Statutes and Commission regulations. TECO claims that approval of WHG’s interpretation of Rule 25-6.049, F.A.C., would cause a change in its plans to serve the property. TECO asserts that it is currently serving WHG pursuant to the Commission’s long-standing interpretation of Rule 25-6.049, F.A.C., which it asserts is contrary to the interpretation of the rule WHG sets forth in its Petition. TECO further states this interpretation will affect how the company provides service under the rule in future cases. TECO states that WHG does not oppose its intervention, so long as WHG is given the opportunity to respond to TECO’s comments.

Standard for Intervention

Rule 28-105.0027(1), F.A.C., states that “[p]ersons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene” and that intervention shall be allowed for “persons meeting the requirements for intervention of this rule.” The motion to intervene must include “[a]llegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the declaratory statement.”

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) it will suffer injury in fact which is of sufficient immediacy and (2) this substantial injury is of a type or nature that 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. 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. denied, 513 So. 2d 1063 (Fla. 1987) (stating that speculation on the possible occurrence of injurious events is too remote).

Analysis & Ruling

TECO’s Motion is hereby granted because the company has complied with the requirements of Rule 28-105.0027, F.A.C., and has met the two-prong standing test in Agrico. TECO has demonstrated that the Commission’s decision on the declaratory statement will affect its substantial interests and that the injury it will suffer is of sufficient immediacy and is of the type or nature that the proceeding is designed to protect. As TECO is the utility company serving WHG’s property, the Commission’s decision will affect the manner of service TECO provides to WHG. Moreover, WHG named TECO in the Petition.

TECO may file written comments on the Petition by December 6, 2023. WHG may file its response to those comments by December 12, 2023.

Based on the foregoing, it is

ORDERED by Commissioner Mike La Rosa, as Prehearing Officer, that Tampa Electric Company’s Motion to Intervene is hereby granted. It is further

ORDERED that Tampa Electric Company may file written comments on the Petition by December 6, 2023, and 1150 WHG, LLC may file its response to those comments by December 12, 2023. It is further

ORDERED that all parties to this proceeding shall furnish copies of all 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 28th day of November, 2023.



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.

CGD

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.