

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Variance from) DOCKET NO.: _____
Rule 25-6.043(1)(a)1, Florida Administrative Code)
By Tampa Electric Company) FILED: October 24, 2023

**PETITION FOR VARIANCE FROM
RULE 25-6.043(1)(a), FLORIDA ADMINISTRATIVE CODE**

Tampa Electric Company (“Tampa Electric” or “the company”), pursuant to Section 120.542, Florida Statutes, and Rules 28-104.002 and 28-106.201, Florida Administrative Code, submits this Petition and seeks a variance from the requirements of Rule 25-6.043(1)(a)1, Florida Administrative Code (“MFR Rule”), and states:

I. Preliminary Information

1. This Petition requests a variance from the MFR Rule to use a 4CP and full MDS methodology cost of service methodology when preparing the E Schedule MFRs in its next rate case in lieu of the 12 CP and 1/13th methodology specified in the MFR Rule so Tampa Electric can comply with the terms of its 2021 Agreement.

2. The Petitioner’s name and address is:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

3. Any pleading, motion, notice, order, or other document required to be served upon Tampa Electric or filed by any party to this proceeding shall be served upon the following individuals:

J. Jeffrey Wahlen
jwahlen@ausley.com
Malcolm N. Means
mmeans@ausley.com
Virginia Ponder
vponder@ausley.com
Ausley McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115
(850) 222-7560 (fax)

Paula K. Brown
regdept@tecoenergy.com
Manager, Regulatory Coordination
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601
(813) 228-1444
(813) 228-1770 (fax)

4. Tampa Electric is a Florida corporation and a wholly owned subsidiary of TECO Energy, Inc., which is a wholly owned subsidiary of Emera Incorporated. The company is an investor-owned public utility operating under the Commission's jurisdiction pursuant to Chapter 366, Florida Statutes.

5. Tampa Electric provides retail service to over 810,000 customers in a 2,000 square mile service territory in Hillsborough and portions of Polk, Pinellas and Pasco Counties, Florida. Tampa Electric and its approximately 2,400 employees are focused on safety, providing cleaner and greener energy for its communities, and making it easier for its customers to do business with the company – when and where they want.

6. The agency affected by this Petition is the Florida Public Service Commission, located at 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399. This Petition represents an original pleading and is not filed in response to any proposed action by the Commission. Accordingly, the company is not responding to any proposed agency action.

II. Statement on Disputed Issues of Material Fact

7. In compliance with paragraph (2)(d) of Rule 28-106.201, Tampa Electric states that it is not aware of any disputed issues of material fact at this time and does not believe any disputed issues of material fact will arise in this docket.

III. Applicable Law – Petition for Variance

8. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances.” The Legislature accordingly found that “it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.”

9. The Florida Administrative Procedure Act defines a “variance” as “a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule.” §120.52(21), Fla. Stat.

10. Section 120.542(1), Florida Statutes expressly authorizes agencies, including the Commission,¹ to “grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section.”

11. Pursuant to Section 120.542(2), a variance “shall be granted” when: (1) the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person; and (2) when application of a rule would create substantial hardship or would violate principles of fairness.

12. Rule 28-104.002 implements Section 120.542, Florida Statutes. It provides that a petition seeking a variance must: (1) identify applicable rule or portion of the rule; (2) a citation to

¹ “The Commission is subject to the provisions of the Administrative Procedure Act except where specifically provided otherwise.” *Legal Envtl. Assistance Found., Inc. v. Clark*, 668 So. 2d 982, 986 (Fla. 1996) (citations omitted).

the statute the rule is implementing; (3) the type of action requested; (4), the specific facts that demonstrate a substantial hardship or violation of the principles of fairness that would justify a variance; (5) the reason why the variance would serve the purposes of the underlying statute; and (6) a statement regarding whether the variance or waiver is permanent or temporary. *See* R. 28-104.002(2)(d)-(i), F.A.C. Each of these required elements is included in the paragraphs below.²

IV. Required Contents of Petition – Rule 28-104.022

(1) Applicable Rule

13. Tampa Electric seeks a variance from the requirements of Rule 25-6.043, Florida Administrative Code (“MFR Rule”). That Rule governs petitions filed by investor-owned utilities seeking an increase in rates. Pursuant to the MFR Rule, a petition for rate increase must include or be accompanied by certain specific information, including:

The information required by Commission Form PSC 1026 (12/20), entitled “Minimum Filing Requirements for Investor-Owned Electric Utilities,” which is incorporated into this rule by reference, and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12642>. This form is also available on the Commission’s website, www.floridapsc.com.

R. 25-6.043(1)(a)1, F.A.C.

14. Minimum Filing Requirement (“MFR”) Schedules E-1 through E-19c (“E Schedules”) require a utility seeking a rate increase to provide a cost-of-service study and rate design information. Schedule E-1 requires this cost-of-service study to be prepared using a specific allocation methodology. Schedule E-1 states, in relevant part:

Provide under separate cover a cost-of-service study that allocates production and transmission plant using the average of the twelve-monthly coincident peaks and 1/13 weighted average demand (12 CP and 1/13th) method. In addition, if the company is proposing a different cost allocation method, or if a different cost allocation method was adopted in its last rate case, provide cost of service studies

² In addition to these substantive contents, Rule 28-104.002(2) also requires a petition for variance to include a specific caption as well as the name and contact information of the petitioner’s attorney. R. 28-104.002(2)(a)-(c), F.A.C. This information is included on the first two pages of this Petition.

using these methods as well. All studies filed must be at both present and proposed rates. The cost-of-service analysis must be done separately for each rate class. If it is not possible to separate the costs of the lighting classes, the lighting classes can be combined.

(2) Statute Implemented

15. The MFR Rule implements Sections 366.04, 366.06, and 366.071 of the Florida Statutes.

16. Section 366.04, Florida Statutes, grants the Commission jurisdiction “to regulate and supervise each public utility with respect to its rates and service.”

17. Section 366.06, Florida Statutes, sets out the procedures for utility petitions for rate increases and grants the Commission authority to “determine and fix fair, just, and reasonable” utility rates. Section 366.06(3) requires the Commission to establish minimum filing requirements for rate cases by rule.

18. Section 366.071, Florida Statutes grants the Commission the power to authorize collection of interim rates during a proceeding for a change in utility rates.

(3) Type of Action Requested

19. Tampa Electric requests a variance from the MFR Rule to use a 4CP and full MDS methodology cost of service methodology when preparing the E Schedule MFRs in its next rate case in lieu of the 12 CP and 1/13th methodology specified in the MFR Rule.

(4) Specific Facts Demonstrating Violation of the Principles of Fairness

20. Using the 12 CP and 1/13th cost of service methodology as specified in the MFR Rule when preparing and filing the MFRs for the company’s next base rate case would violate principles of fairness, because doing so would cause the company to violate the terms of its approved 2021 rate case settlement agreement.

21. Tampa Electric filed a depreciation and dismantlement study for approval with the Commission on December 30, 2020, which was assigned Docket No. 20200264-EI. On April 9, 2021, the company filed a petition for a general base rate increase, which was assigned Docket No. 20210034-EI. These two dockets were consolidated by Order No. PSC-2021-0147-PCO-EI, issued on April 22, 2021.

22. On August 6, 2021, Tampa Electric filed a settlement agreement in the consolidated dockets. This agreement, known as the “2021 Agreement,” was signed by all parties to the consolidated dockets and was designed to resolve all outstanding issues in the dockets. On November 10, 2021, the Commission entered Order No. PSC-2021-0423-S-EI, which approved the 2021 Agreement.

23. Pursuant to Paragraph 6(b) of the 2021 Agreement, Tampa Electric agreed to several “cost-of-service principles and rate design considerations,” including: (1) a transition to full implementation and application of Minimum Distribution System (“MDS”) in the cost-of-service study for rate allocation purposes, with the exception of the base service charge rate design for the RS and GS rate classes; and (2) a transition to use of a full four coincident peak (“4 CP”) method for allocation of all production and transmission costs to each rate schedule within the cost-of-service study.

24. Paragraph 6(d) of the 2021 Agreement required Tampa Electric to allocate the company’s revenue requirement by applying a revenue attribution “derived by application of the 4 CP methodology for allocating production and transmission plant costs and the use of the full Minimum Distribution System (‘MDS’) costing method for allocating distribution plant costs, as mitigated.” This revenue requirement allocation was set out in “Exhibit K” to the 2021 Agreement.

25. Paragraph 6(d) also governs Tampa Electric’s revenue allocation among customer classes in the company’s *next* base rate case. That paragraph states, in relevant part:

The parties have agreed to the transitional revenue percentage allocations shown in Exhibit K, with the further understanding that the company will, for purposes of meeting its initial burden of proof in complying with Rule 25-6.043, F.A.C., in Tampa Electric’s next general base rate proceeding, file the cost-of-service MFRs using the 4CP and full MDS methods for cost allocation. The company further commits to base its filed revenue attribution among customer classes in its next general base rate proceeding on full implementation of the 4CP and MDS methodologies, and in that initial filing to substantially and materially improve the position of all above-parity customer classes toward parity, such that costs are allocated and revenue is collected consistent with 4CP and full MDS methods. All parties and affiliates of TECO (“Precluded Parties”) will either not oppose, or will support, the 4CP and full MDS implementation. If the 4CP or full MDS methodology is opposed in the next general base rate case by an entity other than a Precluded Party, the Parties will indicate that they continue to support or not oppose implementation of the 4CP and full MDS, but in response, may offer responsive information on alternative cost-of-service methodologies and revenue allocation methodologies solely on an alternative basis.

(emphasis added)

26. This paragraph requires Tampa Electric to prepare the cost-of-service study in the company’s next base rate case using a 4CP and full MDS methodology. It also prohibits Tampa Electric from providing a cost-of-service study prepared using an alternative methodology, like 12CP and 1/13th, unless an entity opposes 4CP and full MDS and requests such an alternative study. Taken together, the company must use the 4CP and full MDS methodology when preparing its cost of service and rate design MFR schedules and not the 12CP and 1/13th methodology required by the E Schedules incorporated in the MFR Rule.

27. Section 120.542(2) explains that “principles of fairness” are violated when “the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.” Here, application of the 12CP and 1/13th methodology in the MFR Rule affects Tampa Electric differently than other public

utilities because filing the MFR E Schedules using the 12CP and 1/13th methodology would cause Tampa Electric to violate the terms of Paragraph 6 in the Commission-approved 2021 Agreement.

(5) The Variance Will Serve the Purposes of the Underlying Statutes

28. The MFR Rule implements Sections 366.04, 366.06, and 366.071 of the Florida Statutes. These underlying statutes all govern the Commission’s authority to set rates and the procedure for doing so.

29. The MFR Rule implements these statutes by setting out the required contents of a utility’s base rate case filing. The MFRs required by the rule are a series of schedules setting out “accounting and engineering data and rate structure and billing data”³ which, taken together, provide “the information necessary to review rate requests.”⁴

30. The requested variance will serve the purposes of the underlying statutes because Tampa Electric will still provide a cost-of-service study that will allow the Commission to review and evaluate the company’s rate request. This study required to be filed by the 2021 Agreement (4CP and full MDS) will simply follow a different methodology than the 12CP and 1/13th methodology specified in the MFR Rule.

(6) Duration of Variance

31. Paragraph 1 of the 2021 Agreement states:

This 2021 Agreement will become effective upon the date of the Commission’s vote approving it (“Effective Date”) and, except as specified otherwise herein, shall continue through and including December 31, 2024, such that, except as specified in this 2021 Agreement, no base rates, charges, or credits (including the CCV and

³ *In re: Adoption of Rules 25-6.43, Electric Utility Minimum Filing Requirements; Commission Designee; and Rule 25-6.435, Interim Rate Relief*, Order No. 10002, 800758-EU, issued May 7, 1981, in Docket No. 800758-EU.

⁴ *In re: Tampa Electric Company Projected Test Year Filing Requirement*, Order No. 10626, issued February 26, 1982, in Docket No. 8200007-EU; *see also In re: Adoption of Rule 25-30.443; Amendment of Rules 25-30.430, 25-30.436, 25-30.437, 25-30.440, and 25-30.442; and Repeal of 25-30.435 and 25-30.439, F.A.C.*, Order No. No 22125, issued November 2, 1989 in Docket No. 87-1140-WS (describing the equivalent water utility MFRs as “a series of schedules that require information on a utility’s accounting and engineering costs, rate structures and billing practices for a test year” and stating that the MFRs “provide the information necessary to allow the Commission to investigate a utility’s request for a rate change.”).

Stand-by Generation credits that are specifically the subject of this 2021 Agreement) or rate design methodologies will be changed with an effective date before January 1, 2025. The period from the Effective Date through December 31, 2024 (subject to subparagraph 10(c)) shall be referred to herein as the "Term."

Thus, the "term" of the 2021 Agreement ends December 31, 2024, but the 2021 Agreement controls the cost-of-service methodology to be used in the filing of the company's next base rate case proceeding.

32. Tampa Electric requests a temporary variance from the MFR Rule to apply only during the pendency of the company's next base rate case, the timing of which is presently uncertain. However, the 2021 Agreement provides, with limited exceptions, that the company can only seek new base rates and charges to be effective after December 31, 2024.

V. Other

33. Tampa Electric acknowledges that the Commission's order approving the 2021 Agreement could be interpreted as having granted the rule waiver requested in this Petition. The company files this Petition in an abundance of caution so there will no dispute or uncertainty over whether filing the cost-of-service and rate design MFRs using the 4CP and full MDS methods for cost allocation in the company's next base rate case constitutes "fil[ing] with the clerk the minimum filing requirements as established by rule of the commission" within the meaning of Section 366.06(3), Florida Statutes.

WHEREFORE, Tampa Electric requests that the Commission grant Tampa Electric a variance from the MFR Rule to allow the company to use a 4CP and full MDS methodology cost of service methodology when preparing the E Schedule MFRs in its next rate case in lieu of the 12 CP and 1/13th methodology specified in the MFR Rule.

DATED this 24th day of October 2023.

Respectfully submitted,



J. JEFFRY WAHLEN
MALCOLM N. MEANS
VIRGINIA PONDER
Ausley McMullen
123 S. Calhoun Street (32301)
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition, filed on behalf of Tampa Electric Company, has been served by electronic mail or hand delivery on this 24th day of October 2023 to the following:

Major Thompson
Ryan Sandy
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
mthompson@psc.state.fl.us
rsandy@psc.state.fl.us

Walt Trierweiler
Charles Rehwinkel
Mary Wessling
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
wtrierweiler@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
wessling.mary@leg.state.fl.us

Stephanie U. Eaton
Spilman Thomas & Battle, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
seaton@spilmanlaw.com

Barry A. Naum
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
bnaum@spilmanlaw.com

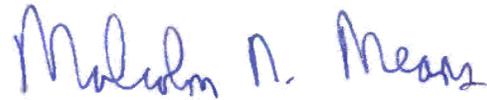
Florida Industrial Power Users Group
Jon Moyle
Karen Putnal
c/o Moyle Law Firm
118 N. Gadsden Street
Tallahassee, FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

Federal Executive Agencies
Thomas A. Jernigan
Holly L. Buchanan, Maj, USAF
Scott L. Kirk, Maj, USAF
Arnold Braxton, TSgt, USAF
Ebony M. Payton
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403
thomas.jernigan.3@us.af.mil
holly.buchanan.1@us.af.mil
scott.kirk.2@us.af.mil
arnold.braxton@us.af.mil
ebony.payton.ctr@us.af.mil

Mr. Robert Scheffel Wright
John LaVia, III
Gardner, Bist, Wiener, Wadsworth, Bowden,
Bush, Dee, LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
shef@gbwlegal.com
jlavia@gbwlegal.com

WCF Hospital Utility Alliance
Mark F. Sundback
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Ave., N.W., Suite 100
Washington, D.C. 20006-6801
msundback@sheppardmullin.com

Joint Administrative Procedures Committee
Pepper Building, Room 680
111 West Madison Street
Tallahassee, FL 32399-1400
(Hand Delivery)



ATTORNEY