

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company.

DOCKET NO. 080317-EI
ORDER NO. PSC-08-0599-PCO-EI
ISSUED: September 16, 2008

ORDER GRANTING FLORIDA RETAIL FEDERATION'S
PETITION TO INTERVENE

By petition dated August 26, 2008, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding pursuant to Chapters 120 and 366, Florida Statutes (F.S.), and Rules 25-22.036, 25-22.039 and 28-106.201, Florida Administrative Code (F.A.C.). The FRF also petitions the Florida Public Service Commission (Commission) to conduct a general investigation of Tampa Electric Company's (TECO's) rates - i.e., a general rate case - and to conduct a hearing on TECO's rates in accordance with Chapters 120 and 366, F.S. In its petition, FRF states that it is an established association with more than 10,000 members in Florida, many of whom are retail customers of TECO. FRF alleges that because a substantial number of its members are TECO's retail customers, their substantial interests will be affected by the Commission's decisions in this docket.

FRF states that the Commission will decide whether TECO's request for a general rate increase and whether any changes - increases or decreases - in TECO's rates are appropriate. FRF asserts that its members require adequate, reasonably priced electricity in order to conduct their businesses consistent with the needs of their customers and owners. FRF therefore contends that its interests are of the type this proceeding is designed to protect. Accordingly, FRF argues it is entitled to intervene in this docket in order to protect its members' substantial interests.

TECO filed a response to FRF's petition to intervene. TECO states that FRF's petition reference to Rule 25-22.036, F.A.C., is misplaced because FRF cannot initiate a proceeding that has already been initiated. TECO contends that reference to Rule 25-22.039, F.A.C., is more appropriate because if permitted to intervene in this docket, FRF takes the case as it finds it, a rate proceeding initiated pursuant to Section 366.06, F.S., as reflected in TECO's petition and the Order Establishing Procedure in this docket. In addition, TECO contends that Commission's rule on intervention clearly does not empower an intervenor to retroactively recast an on-going proceeding into some different type of proceeding from that already under way.

Standards for Intervention

Pursuant to Rule 25-22.039, 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 petition for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding

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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. 2nd DCA 1981). The intervenor must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) that this substantial injury is of a type or nature which 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. 3rd 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).

Further, the test for associational standing was established in Florida Home Builders v. Dept. of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in Agrico. Associational standing may be found where: (1) the association demonstrates that a substantial number of an association's members may be substantially affected by the Commission's decision in a docket; (2) the subject matter of the proceeding is within the association's general scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members.

Rule 25-22.036, F.A.C., Initiation of Formal Proceedings, details when a complaint or application is appropriate and what should be included in the application or complaint.

Analysis & Ruling

It appears that FRF meets the two prong standing test in Agrico as well as the three prong associational standing test established in Florida Home Builders. FRF asserts that it is an established association with more than 10,000 members in Florida, many of whom are retail customers of TECO and that these members purchase electricity from TECO pursuant to several different TECO rate schedules. FRF further states that this is the type of proceeding designed to protect its members' interests. Therefore, FRF's members meet the two prong standing test of Agrico.

With respect to the first prong of the associational standing test, FRF asserts that its members are retail electric customers of TECO and that its members' substantial interests will be directly affected by the Commission's decision in this proceeding. With respect to the second prong of the associational standing test, the subject matter of the proceeding appears to be within FRF's general scope of interest and activity. FRF asserts that it is an established association with

more than 10,000 members in Florida, many of whom are retail customers of TECO. FRF contends that its members will be directly affected by the proposed rates. As for the third prong of the associational standing test, FRF is seeking intervention in this docket to represent the interests of its members in reviewing the prudence of the proposed rate increase and to ensure that the rates its members pay to TECO are just and reasonable. Because those costs affect the electric rates that its members must pay, FRF appears to be in a position to request the Commission to grant relief on behalf of its members.

Because FRF meets the two prong standing test established in Agrico as well as the three prong associational standing test established in Florida Home Builders, FRF's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., FRF takes the case as it finds it. The issues FRF raised in its petition can be raised during the normal course of this proceeding.

As stated, Rule 25-22.036, F.A.C., Initiation of Formal Proceedings, details when a complaint or application is appropriate and what should be included in the application or complaint. Here, this proceeding was initiated well in advance of FRF's petition to intervene, thus, FRF's reference to Rule 25-22.036, F.A.C., is misplaced.

Based on the foregoing, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by the Florida Retail Federation is hereby granted as set forth in the body of this Order. 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:

Florida Retail Federation
c/o Young van Assenderp, P.A.
Robert Scheffel Wright
John T. LaVia, III
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 222-7206
Facsimile: (813) 561-6834

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 16th day of September, 2008.



NATHAN A. SKOP
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., 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 25-22.060, 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.