

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 130040-EI
ORDER NO. PSC-13-0247-PCO-EI
ISSUED: June 4, 2013

ORDER GRANTING PETITION TO INTERVENE

On February 4, 2013, Tampa Electric Company (TECO) filed a test year letter, as required by Rule 25-6.140, Florida Administrative Code (F.A.C.), notifying this Commission of its intent to file a petition in the Spring of 2013 for an increase in rates effective January 1, 2014. Pursuant to the provisions of Chapter 366, Florida Statutes (F.S.), and Rules 25-6.0425 and 25-6.043, F.A.C., TECO filed the petition for an increase in rates on April 5, 2013. The hearing is scheduled to commence on September 9, 2013.

Petition for Intervention

By petition dated May 10, 2013, the WCF Hospital Utility Alliance (HUA) requested permission to intervene in this proceeding. HUA states that it is an ad hoc group consisting of regional healthcare providers in west central Florida providing acute healthcare services, each of whom receive electric service from TECO. HUA states that the HUA was created to advocate for the lowest reasonable rates for its members who will be substantially affected by TECO's proposed rate increase. HUA did not provide the names of its members in its initial petition and has never previously applied for or been granted intervention in a Commission docket.

TECO timely filed its Memorandum in Opposition to Petition to Intervene of the WCF Hospital Utility Alliance (Memorandum) on May 17, 2013. In its Memorandum, TECO argued that HUA had not provided enough information regarding its ad hoc group or its members to meet the requirements of Florida Home Builders Assn. v. Dept. of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982) and Farmworker Rights Organization v. Dept. of Health & Rehabilitative Services, 417 So. 2d 753 (Fla. 1982) for associational standing. No other objections to the intervention of HUA have been filed.

HUA provided a list of its members to TECO in response to TECO's objection, and on May 24, 2013, TECO withdrew its opposition to HUA's request to intervene. On May 30, 2013 HUA filed its Supplement to Petition to Intervene which consists of a list of its members and requested confidential classification of that information.

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

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petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), 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....

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 that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing, and (2) this substantial injury is of a type or nature which 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. 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).

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.

Analysis & Ruling

Based upon a review of the materials provided by HUA, it appears that HUA meets the two-prong standing test in Agrico as well as the three-prong associational standing test established in Florida Home Builders. HUA asserts that it is an ad hoc group consisting of healthcare providers, each of whom are TECO ratepayers. HUA contends that these members' substantial interests will be affected by this Commission's decision in this proceeding. HUA further asserts that this is the type of proceeding designed to protect its members' interests. Therefore, HUA's members meet the two-prong standing test of Agrico.

With respect to the first prong of the associational standing test, HUA asserts that all of its members are located in TECO's service area and receive electric service from TECO, for which they are charged TECO's applicable service rates. Accordingly, HUA states that its members will be substantially affected by this Commission's determination in this rate proceeding. With respect to the second prong of the associational standing test, the subject

matter of the proceeding appears to be within HUA's general scope of interest and activity. HUA is a regional healthcare provider association which acts as an advocate on behalf of its member healthcare institutions. As for the third prong of the associational standing test, HUA seeks intervention in this docket to represent the interests of its members, as TECO customers, in seeking reliable service and the lowest rates possible. The relief requested by HUA is of a type appropriate for an association to obtain on behalf of its members.

Because HUA meets the two-prong standing test established in Agrico as well as the three-prong associational standing test established in Florida Home Builders, HUA's petition for intervention shall be granted. Pursuant to Rule 25-22.039, F.A.C., HUA takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Petition to Intervene filed by the WCF Hospital Utility Alliance (HUA) 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:

Kenneth L. Wiseman
Mark F. Sundback
Lisa M. Purdy
William M. Rappolt
Blake R. Urban
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Washington, DC 20005
Phone: (202) 662-2700
Fax: (202)662-2739
kwiseman@andrewskurth.com

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 4th day of June, 2013.



JULIE I. BROWN

Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

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.