

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20240026-EI

In re: Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company.

DOCKET NO. 20230139-EI

In re: Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

DOCKET NO. 20230090-EI

ORDER NO. PSC-2024-0182-PCO-EI
ISSUED: June 3, 2024

ORDER GRANTING INTERVENTION OF
THE AMERICANS FOR AFFORDABLE CLEAN
ENERGY, INC., CIRCLE K STORES, INC.,
RACETRAC, INC. AND WAWA, INC.

On April 2, 2024, Tampa Electric Company (“TECO” or “Utility”) filed a petition, minimum filing requirements, and testimony for an increase in base rates effective January 2025. By Order No. PSC-2024-0096-PCO-EI, an administrative hearing has been scheduled for these matters for August 26–30, 2024.

Petition for Intervention

On April 24, 2024, the Americans for Affordable Clean Energy, Inc. (“ACE”), Circle K Stores, Inc. (“Circle K”), RaceTrac Inc. (“RaceTrac”), and Wawa, Inc. (“Wawa”) (collectively “Petitioners”) filed their Petitions to Intervene (“Petition”). Petitioners represent that they consulted with TECO and the Office of Public Counsel and neither objects to its intervention. No intervenor filed an objection to this intervention.

AACE

According to the Petition, AACE is an established nonprofit association of fuel retailers that includes Circle K, RaceTrac, and Wawa, each of which also seeks intervention in this matter. The Petition states AACE’s intervention in this matter is on behalf of its five fuel retailer members in Florida all of whom are TECO customers and include owners and operators of convenience stores, public travel facilities, and truck stops. AACE asserts that its members provide fuel of all types, including electric vehicle (“EV”) charging, as well as other services dependent upon electric service from TECO and thus the rates, terms, and conditions governing the provision of that electric service will have a substantial and material impact on AACE.

Circle K

Also according to the Petition, Circle K is one of the largest independent convenience store operators in the United States, with approximately 70 locations within TECO's service territory, one of which currently offers electric vehicle charging services. Accordingly, Circle K is a large retail customer of TECO, whose further expansion of EV refueling stations with TECO's service territory is dependent, in part, upon the outcome of this hearing.

RaceTrac

Again according to the Petition, RaceTrac is a family-owned business currently operating over 800 convenience stores, with 295 stores operating in Florida including 39 refueling stations located within TECO's service territory. RaceTrac pays TECO substantial amounts for electric service each year, making RaceTrac a large retail customer of TECO. RaceTrac currently offers EV charging in areas outside of TECO's service area and looks to expand its EV charging services into the TECO area.

Wawa

Finally, according to the Petition, Wawa is a privately held, family-owned company operating approximately 280 stores in Florida while continuing to actively expand in Florida. Wawa currently has 30 locations within TECO's service territory, including 6 which have EV charging stations, making Wawa a large retail customer of TECO. Wawa anticipates adding 25 EV refueling stations within TECO's service territory over the next 10 years.

Standards for Intervention

Pursuant to Rule 28-106.205, 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 Florida Public Service Commission ("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.

Circle K, RaceTrac, and Wawa (collectively, "the Fuel Retailers") argue that they are persons whose substantial interest may be impacted and, therefore, have standing to intervene under the two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*.¹ Under *Agrico*, the intervenors must show that (1) they will suffer

¹ *Agrico Chem. Co. v. Dep't of Envtl. Regulation*, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).

injury in fact that is of sufficient immediacy to entitle them 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. *Agrico* at 482. 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.²

AACE argues that it has standing to represent its members as an association. The test for associational standing was established in *Florida Home Builders Association v. Department of Labor and Employment Security*³ and *Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services*,⁴ which is based on the basic standing principles established in *Agrico*.⁵ 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.⁶

Analysis and Ruling

AACE and the Fuel Retailers allege that they are large retail customers of the Utility and therefore their substantial interests as ratepayers will or may be affected by TECO's request for a rate increase. Furthermore, AACE alleges the subject matter of this proceeding is well within its established scope of interest and activity, that AACE routinely appears on behalf of its members' interest in a variety of regulatory proceedings, and that the relief being requested appears to be of a type appropriate for this association to obtain on behalf of its members. Therefore, AACE meets the requirements for associational standing and the Fuel Retailers meet the requirements for individual standing. Accordingly, AACE and the Fuel Retailers will be permitted to intervene as parties in this proceeding.

The determination in this Order that the Petition shall be granted as to AACE and the Fuel Retailers is based solely upon the status of the individual intervenors and association members as TECO ratepayers. Intervention is not being granted based upon the alleged impacts of EV charger programs or the development of green hydrogen as an alternative fuel on economic interests or business competition. Such claims are beyond the scope of a base rate proceeding.⁷ The impact of EV charger programs and green hydrogen on base rates and TECO

² *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).

³ *Fla. Home Builders Ass'n v. Dep't of Labor & Emp't Sec.*, 412 So.2d 351 (Fla. 1982).

⁴ *Farmworker Rights Org., Inc. v. Dep't of Health & Rehab. Servs.*, 417 So.2d 753 (Fla. 1st DCA 1982).

⁵ *Agrico*, 406 So. 2d 478, 481-82.

⁶ *Fla. Home Builders Ass'n*, 412 So.2d at 353-54; *Farmworker Rights Org., Inc.*, 417 So.2d at 754.

⁷ Order No. PSC-2021-01510PCO-EI, issued April 22, 2021, in Docket No. 20210016-EI, *In re: Petition for limited proceeding to approve 2021 settlement agreement, including general based rate increases, by Duke Energy Florida, LLC*. ("broad economic competition-based arguments for standing also do not satisfy the second prong of the Agrico test, because the injury . . . is not of a type or nature that this proceeding is designed to protect").

ratepayers may or may not present appropriate issues for consideration in this docket. If necessary, this determination will be made by the Prehearing Officer in the Prehearing Order.

Based on the foregoing, it is

ORDERED by Commissioner Gary Clark, as Prehearing Officer, that the Petition to Intervene filed by the Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac Inc., and Wawa, Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that the Americans for Affordable Clean Energy, Inc., Circle K Stores, Inc., RaceTrac Inc., and Wawa, Inc. take the case as they find 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 Gary F. Clark, as Prehearing Officer, this 3rd day of June,
2024.



GARY F. CLARK
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.

TPS

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.