

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 20210034-EI

In re: Petition for approval of 2020 depreciation and dismantlement study and capital recovery schedules, by Tampa Electric Company.

DOCKET NO. 20200264-EI
ORDER NO. PSC-2021-0185-PCO-EI
ISSUED: May 20, 2021

ORDER GRANTING WALMART INC.'S PETITION TO INTERVENE

On April 9, 2021, Tampa Electric Company (TECO) filed a petition, minimum filing requirements, and testimony for a base rate increase. By Order No 2021-0147-PCO-EI, issued on April 22, 2021, Docket No. 20200264-EI, Petition for approval of 2020 depreciation and dismantlement study and capital recovery schedules, by Tampa Electric Company was consolidated with Docket No. 20210034-EI, Petition for rate increase by Tampa Electric Company. Pursuant to Order No. PSC-2021-0172-PCO-EI, issued May 14, 2021, the consolidated dockets are scheduled for hearing on October 18 through October 22, 2021.

Petition for Intervention

By petition dated May 11, 2021, Walmart Inc. (Walmart) requested permission to intervene in this proceeding. Walmart alleges that it is a retail customer of TECO with 36 retail units and one distribution center served by TECO. Walmart asserts that it purchases more than 140 million kWh annually from TECO and that the cost of electric utility service is a significant element in the cost of operation for Walmart which could be impacted by the outcome in this case. Thus, Walmart contends that it has a unique and substantial interest in this matter. Walmart asserts that no party objects to its intervention in this proceeding.

Standard for Intervention

Pursuant to Rule 28-106.205, Florida Administrative Code (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 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. 2d 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, Florida Statutes (F.S.), hearing, and (2) the 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).

Analysis & Ruling

It appears that Walmart meets the two-prong standing test in Agrico. Walmart is a customer of TECO and, thus, will be substantially affected by the rates that are set in this proceeding. Therefore, Walmart has demonstrated that it meets the two-prong standing test of Agrico, and accordingly, Walmart’s petition for intervention shall be granted as set forth herein. Pursuant to Rule 28-106.205, F.A.C., Walmart takes the case as it finds it.

Based on the foregoing, it is

ORDERED by Chairman Art Graham, as Prehearing Officer, that the Petition to Intervene filed by Walmart Inc. is hereby granted as set forth in the body of this Order. It is further

ORDERED that Walmart Inc. takes this case as it finds 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:

Stephanie U. Eaton
SPILMAN THOMAS & BATTLE, PLLC
110 Oakwood Drive, Suite 500
Winston-Salem, NC 27103
Phone: (336) 631-1062
seaton@spilmanlaw.com

Barry A. Naum
SPILMAN THOMAS & BATTLE, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
Phone: (717) 795-2741
bnaum@spilmanlaw.com

By ORDER of Commissioner Art Graham, as Prehearing Officer, this 20th day of May, 2021.



ART GRAHAM
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.

CWM

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.