

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-2021-0195-PCO-EI
ISSUED: June 3, 2021

ORDER GRANTING
FLORIDA RETAIL FEDERATION'S
PETITION TO INTERVENE

BY THE COMMISSION:

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 motion dated May 19, 2021, the Florida Retail Federation (FRF) requested permission to intervene in this proceeding. FRF asserts that it is an established association with more than 8,000 members in Florida, many of whom are retail customers of TECO. FRF represents that its members require safe, adequate, reasonably-priced electricity in order to conduct their businesses. FRF contends that it exists to represent its members' interests in a number of venues, including the Florida Public Service Commission (Commission), and asks to intervene in order to protect its members' interests (1) in having the Commission determine the fair, just, and reasonable rates to be charged by TECO and (2) in having the Commission take such other action to protect the interests of the FRF's members as the Commission may deem appropriate. FRF contends that the substantial interests of its members who are TECO customers will be determined by the Commission's decisions in this case, and accordingly, FRF is entitled to intervene to protect those members' interests. FRF represents that TECO, and Commission staff take no position, the Office of Public Counsel, FIPUG, and the Federal Agencies do not oppose, and Walmart supports the FRF's intervention.

Standards 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 three-prong standing test set forth in Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982), and Farmworker Rights Organization, Inc. v. Department of Health and Rehabilitative Services, 417 So. 2d 753, 754 (Fla. 1st DCA 1982), which is based on the basic standing principles established in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 481-82 (Fla. 2d DCA 1981).¹ 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. Fla. Home Builders, 412 So. 2d at 353-54; Farmworker Rights Org., 417 So. 2d at 754.

Analysis and Ruling

FRF has sufficiently alleged standing in this proceeding under the three-prong test set forth in Florida Home Builders. FRF asserts that: (1) a substantial number of its members will be affected by the Commission's outcome of this case; (2) FRF exists to represent its members' interests in a number of venues, including the Florida Public Service Commission; and (3) the lowest rates consistent with the Commission's governing law is relief that will apply to all such members. Therefore, FRF's participation in this docket is appropriate.

¹ Under Agrico, 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 aspect of the test deals with the degree of injury. The second deals with the nature of the injury. 406 So. 2d 478 at 482. 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. 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).

Based on the foregoing, it is

ORDERED by Commissioner Art Graham, as Prehearing Officer, that the Motion to Intervene filed by Florida Retail Federation is hereby granted as set forth in the body of this Order. It is further

ORDERED that Florida Retail Federation takes the 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:

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By ORDER of Commissioner Art Graham, as Prehearing Officer, this 3rd day of June,
2021.



ART GRAHAM
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.

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.