

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for rate increase by Tampa § Docket No. 20210034-EI  
Electric Company §  
§ Dated June 3, 2021  
§

**PETITION TO INTERVENE OF  
THE WEST CENTRAL FLORIDA HOSPITAL UTILITY ALLIANCE**

The West Central Florida Hospital Utility Alliance (“HUA”), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.201, 28-106.203 and 28-106.205 of the Florida Administrative Code, hereby petitions the Florida Public Service Commission (“Commission”) to intervene in the captioned docket regarding the rates and charges proposed to be charged by Tampa Electric Company (“TECO”). TECO is a public utility that is subject to the Commission’s jurisdiction over the rates and service of public utilities in Florida.

In support of its Petition to Intervene, HUA states as follows:

1. The name and address of HUA for purposes of this proceeding is:

Mark Sundback  
WCF Hospital Utility Alliance  
c/o Sheppard Mullin Richter & Hampton  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006  
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2. All pleadings, orders and correspondence should be directed to Petitioners’ representatives as follows:

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3. The agency affected by this petition to Intervene is:

Florida Public Service Commission  
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4. HUA is an ad hoc group consisting of regional healthcare providers in west central Florida that receive power from, and pay the rates of, TECO. These individual healthcare providers are engaged in providing, *inter alia*, acute healthcare services. Because of the services they render, their load profile, and their concern with service reliability and the cost of electric service, the HUA regional healthcare providers have important concerns regarding TECO's services and rates.

5. **HUA Standing**: In prior TECO rate proceedings, HUA has been recognized to have standing and been granted intervenor status.<sup>1</sup>

Under Florida law, to establish standing to represent its members' substantial interests, a group such as HUA must demonstrate three things:

- a. that a substantial number of entities that comprise the group, although not necessarily a majority, are substantially affected by the agency's decisions;
- b. that the intervention by the group is within the group's general scope of interest and activity; and
- c. that the relief requested is of a type appropriate for a group to obtain on behalf of its members.<sup>2</sup>

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<sup>1</sup> See Attachment A hereto containing Order No. PSC-13-0247-PCO-EI, "Order Granting Petition To Intervene" in Docket No. 130040-EI (June 3, 2013).

<sup>2</sup> *Florida Home Builders Ass'n v. Dept of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982); *Farmworker Rights Org. v. Dep't of Health & Rehabilitation Servs.*, 417 So. 2d 753 (Fla.1982).

6. HUA satisfies all of these standing requirements. First, all of the entities that comprise HUA are located in TECO's service area and receive their electric service from TECO, for which they are charged TECO's applicable service rates. Thus, they will be substantially affected by the Commission's determination of TECO's rates. Second, HUA was created to act as an advocate for its members with respect to the electric services provided and rates charged by TECO. Therefore, intervention is within the group's general scope of interest and activity. Third, the relief requested -- intervention, and with it, the right to seek the lowest reasonable rates consistent with the Commission's governing law and policy -- is the type of relief the Commission can grant and has been the basis for the Commission's grant of standing to many organizations in rate case proceedings. Therefore, the requested relief is of a type appropriate for a group such as HUA to obtain on behalf of its members. As demonstrated, HUA has established standing as an organization representing the substantial interests of a group of TECO ratepayers.

7. **Statement of Substantial Interests Affected:** This docket was initiated by a letter dated February 1, 2021 from TECO informing the Commission of TECO's intent to file a petition for authority to increase its base rates effective and various charges, with new rates expected to be effective on or after January 1, 2022.

8. These proceedings thus will examine the rates that TECO will be authorized to charge to its customers. The Commission will necessarily have to decide whether any rate increases or decreases are justified, and if so, approve rates and charges in order to implement such increases or decreases. Thus, the disposition of this case will affect the rates charged by TECO, as well as the terms and conditions of service, impacting TECO's customers, including institutions supporting HUA. Institutions represented by HUA require reliable and reasonably-priced electricity. Because institutions supporting HUA will be directly and substantially affected by

any action the Commission takes in TECO's current docket, they have a substantial interest in the proceeding that is not adequately represented by other parties to this proceeding.<sup>3</sup>

9. To demonstrate that substantial interests will be affected by a proceeding, the potential intervenor must show: (a) it is acting on behalf of entities that will suffer injury in fact as a result of the agency action contemplated in the proceeding that is of sufficient immediacy as to warrant a hearing; and (b) the injury suffered is a type against which the proceeding is designed to protect.<sup>4</sup> These standards are amply satisfied here. HUA seeks to protect the substantial interests of its supporters as they will be affected by the Commission's decision in this case, and they face immediate injury if the Commission were to approve TECO's proposed rates, which are not just and reasonable and would be unduly discriminatory. HUA's participation in this rate case is designed to protect against that injury. If granted leave to intervene, HUA will be able to attempt to protect its supporting institutions' substantial interests, including the ability to receive reliable electricity at fair, just and reasonable rates.

10. **Disputed Issues of Material Fact**: Disputed issues of material fact in this proceeding may include, but will not necessarily be limited to, the issues listed below. The following statement of issues is general in nature and HUA reserves the right to identify and develop additional issues and refine those listed below as this docket progresses and greater information is provided in accordance with the Commission's rules; HUA presently cannot identify "all disputed issues of material fact," pending completion of discovery and analyses of the

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<sup>3</sup> Insofar as this is a petition for intervention and because there is presently no agency decision pending in this docket, HUA states that Rule 28-106.201(c) of the Florida Administrative Code is not applicable.

<sup>4</sup> See *Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997). See also *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981); *Florida Home Builders Ass'n v. Dep't of Labor and Employment Security*, 412 So. 2d 351, 353-54 (Fla. 1982); *Farmworker Rights Org. v. Dep't of Health & Rehabilitative Servs.*, 417 So. 2d 753 (Fla. 1982)

responses thereto. HUA expects that numerous additional, specific issues will be identified and developed as this docket progresses.

- Issue 1: Determining appropriate jurisdictional levels of TECO's Plant in Service, Accumulated Depreciation, and Rate Base for setting TECO's rates.
- Issue 2: Determining appropriate jurisdictional values of TECO's operation and maintenance expenses for setting TECO's rates.
- Issue 3: Determining whether TECO's expenditures sought to be included in the derivation of the cost of service were prudently incurred.
- Issue 4: Determining the appropriate capital structure for TECO for the purpose of setting TECO's rates.
- Issue 5: Determining the appropriate rate of return on equity for TECO for the purpose of setting TECO's rates.
- Issue 6: Determining the appropriate allocation of TECO's costs of providing retail electric service among TECO's retail customer classes.
- Issue 7: Determining the appropriate rates to be charged by TECO for its services to each customer class.
- Issue 8: Designing rates for recovery of revenue requirements.
- Issue 9: Determining the propriety of TECO's proposed projected twelve-month period ending as the test year for the permanent increase in base rates and service charges.

11. **Ultimate Facts Alleged:** Because HUA and the institutions supporting this filing have substantial interests that are subject to determination in this docket, HUA is entitled to intervene and participate in the proceeding which will determine the fair, just, and reasonable rates to be charged by TECO on or after January 1, 2022.

12. **Specific Statutes and Rules:** The applicable statutes and rules, include, but are not limited to:

- Chapters 120 and 366 of the Florida Statutes; and
- Florida Administrative Code Chapters 25-22 and 28-106.

13. **Relation of Alleged Facts to the Statutes and Rules:** Chapter 120 of the Florida Statutes relates to agency decisions which affect the substantial interests of a participant and related procedures.<sup>5</sup> Chapter 366 of the Florida Statutes declares the Commission's jurisdiction over TECO's rates and provides the Commission the statutory mandate to ensure that TECO's rates are fair, just and reasonable, and that those rates are not unduly discriminatory. The facts alleged here demonstrate that: (1) the Commission's decisions herein will have a significant impact on TECO's rates and charges; (2) TECO's customers, including institutions supporting HUA, will be directly impacted by the Commission's decisions regarding TECO's rates and charges herein; and (3) accordingly, that the statutes herein, among others, provide the basis for the relief requested by HUA.

14. Rules 25-22.039 and 28-106.205 provide bases for intervention in administrative proceedings. Both rules also state that a petition to intervene must conform with subsection 28-106.201(2) of the Florida Administrative Code. Because HUA's supporting institutions are TECO electricity customers, they have a substantial interest in the rates determined by the Commission and will be affected by the Commission's decisions in this docket.

15. **Conclusion:** Consistent with the purposes of the HUA and the substantial interests of its supporting institutions, HUA seeks to intervene in these proceedings, including consolidated dockets. Because the elements necessary for standing have been satisfied (*e.g.*, because HUA's supporting institutions have a substantial interest in TECO's proposed rates and charges which will be affected by the proceeding), the Commission should allow the intervention of HUA, as requested herein.<sup>6</sup>

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<sup>5</sup> See Sections 120.569 and 120.57(1) Florida Statutes.

<sup>6</sup> TECO, Florida Industrial Power Users Group, Florida Retail Federation, Federal Executive Agencies and Walmart have indicated that they do not object to HUA's intervention. In addition, the Office of Public Counsel takes no position regarding the instant Petition.

16. **Relief Requested:** WHEREFORE, HUA respectfully requests that the Commission grant this Petition to Intervene. HUA also respectfully requests that the Commission require that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the HUA representatives indicated in paragraph 2 above.

Respectfully submitted,

/s/ Mark F. Sundback

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**QUALIFIED REPRESENTATIVES FOR  
THE WEST CENTRAL FLORIDA HOSPITAL UTILITY ALLIANCE**

Date: June 3, 2021

# **Attachment A**



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

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

/s/ Julie I. Brown

JULIE I. BROWN

Commissioner and Prehearing Officer  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
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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.

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.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the West Central Florida Hospital Utility Alliance Petition to Intervene has been served by electronic mail, U.S. mail, or Federal Express, this 3rd day of June, 2021, to the following:

### **Attorneys for Tampa Electric**

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