



FILED 11/21/2023
DOCUMENT NO. 06157-2023
FPSC - COMMISSION CLERK

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November 21, 2023

VIA ELECTRONIC FILING

Mr. Adam J. Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition for Declaratory Statement Regarding Rule 25-6.049, F.A.C.
Dkt. 20230128

Dear Mr. Teitzman:

Attached for filing in the above-captioned docket is Tampa Electric Company's Motion to Intervene.

Thank you for your assistance in connection with this matter.

Sincerely,

A handwritten signature in blue ink that reads 'Malcolm N. Means'.

Malcolm N. Means

MNM/bml
Attachments

cc: All Parties of Record
TECO Regulatory

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Declaratory Statement)
By 1150 WHG, LLC)
_____)

DOCKET NO.: 20230128-EI

FILED: November 21, 2023

**TAMPA ELECTRIC COMPANY'S
MOTION TO INTERVENE**

Pursuant to Section 120.54(5)(b)6, Florida Statutes, and Rule 28-105.0027, Florida Administrative Code ("F.A.C."), Tampa Electric Company ("Tampa Electric," or "the company"), files this Motion to Intervene in the above-captioned docket. In support of this Motion, the company states:

I. Introduction

1. The company's name and address are:

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

2. Tampa Electric is a Florida corporation and is a wholly owned subsidiary of TECO Energy, Inc., which is a wholly owned subsidiary of Emera Incorporated. The company is an investor-owned public utility operating under the jurisdiction of the Florida Public Service Commission ("Commission" or "FPSC") pursuant to Chapter 366, Florida Statutes.

3. Tampa Electric provides retail electric service to over 810,000 customers in a 2,000 square mile service territory in Hillsborough and portions of Polk, Pasco, and Pinellas counties, Florida. Tampa Electric and its approximately 2,400 employees are focused on safety, providing cleaner and greener energy for its communities, and making it easier for its customers to do business with the company – when and where they want.

4. All pleadings, motions, notices, orders, or other documents filed in this proceeding or required to be served upon Tampa Electric shall be served upon the following individuals:

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Manager, Regulatory Coordination
Tampa Electric Company
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II. Standard for Intervention

5. On November 8, 2023, 1150 WHG, LLC (the “Petitioner”) filed a Petition for Declaratory Statement with the Commission (“Petition”).

6. Rule 28-105.0027(1), Florida Administrative Code, governs intervention in a proceeding for a declaratory statement. It provides:

Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

7. Pursuant to Rule 28-105.0027(2), a motion to intervene must contain the name, address, e-mail address, telephone number, and facsimile number of the intervenor’s attorney or qualified representative. This information is included in Paragraph 4, above.

8. Rule 28-105.0027(2) also requires the motion to contain allegations “sufficient to demonstrate...that the substantial interests of the intervenor are subject to determination or will be

affected by the declaratory statement.” As explained below, Tampa Electric’s substantial interests will be affected by 1150 WHG’s requested declaratory statement.

III. Tampa Electric’s Substantial Interests

9. In the Petition, the Petitioner states that it is the owner and developer of a residential building located at 1150 3rd Street SW, Winter Haven, Florida and that it is a customer of Tampa Electric.

10. Through the Petition, the Petitioner seeks a declaration from the Commission that the property at 1150 3rd Street is eligible for the “grandfather clause” in Rule 25-6.049, Florida Administrative Code, and that accordingly it is entitled to master-meter the property. In effect, the Petitioner seeks a declaration that any pre-1981, master-metered structure is eligible for the grandfather clause, regardless of use. This interpretation is contrary to the plain language of the Rule and Commission precedent.

11. Chapter 25-6 of the Florida Administrative Code governs electric service by electric public utilities. The rules set out within that chapter “apply to all electric public utilities operating under the jurisdiction of the Florida Public Service Commission.” R. 25-6.002(1), F.A.C.

12. Rule 25-6.049 sets out requirements that electric utilities must follow in measuring customer usage.

13. Tampa Electric is an “electric utility” as defined in Section 366.02(4), Florida Statutes, as well as a “public utility” as defined in Section 366.02(8), Florida Statutes. Tampa Electric is therefore subject to the Commission’s jurisdiction, including Chapter 25-6 generally and Rule 25-6.049 specifically.

14. As a regulated electric public utility, Tampa Electric has a substantial interest in providing safe and reliable power to its customers and in complying with all Florida Statutes and regulations that govern that provision of service, including Rule 25-6.049.

15. These substantial interests will be affected by the Commission’s decision in this docket because Tampa Electric is currently preparing to serve the Petitioner’s property pursuant to the Commission’s long-standing interpretation of Rule 25-6.049,¹ which was recently affirmed by Commission staff when they closed the Petitioner’s customer complaint.² If the Commission agrees with the Petitioner’s interpretation of the Rule, the company will need to change its plans for serving the property.

16. Tampa Electric’s substantial interests will also be affected because the Commission’s decision in this docket will affect how the company provides service under Rule 25-6.049 in future cases. It is likely that there are many buildings in the company’s service area to which the Petitioner’s interpretation of Rule 25-6.049 would apply if the Commission agrees with that interpretation.

17. Tampa Electric’s participation in this docket will allow the company to represent its substantial interests and to provide the Commission with additional information and legal argument as it makes its decision regarding the Petition.

18. Tampa Electric’s participation will not prejudice the Petitioner. Pursuant to Rule 28-105.0027, the deadline to intervene in this docket is December 4, 2023, or 21 days after the Commission published notice in the Florida Administrative Register on November 13, 2023.³ The company’s intervention is therefore timely. Furthermore, the Commission recently published a

¹ The Commission has agreed that “it was not pre-1981 buildings that were intended to be grandfathered by the Rule – it was the non-conforming use to which those buildings were put that the Rule grandfathered.” In other words, the grandfather clause “simply tolerates pre-existing non-conforming uses, it does not condone creation of new ones.” Order No. PSC-98-0449-FOF-EI, issued March 30, 1998 in Docket No. 971542-EI; *see also* Order No. PSC-00-1802-FOF-EU, issued October 2, 2000 in Docket NO. 981104-EU (withdrawing proposed amendment of the Rule to incorporate the above-quoted interpretation of the grandfather clause as unnecessary because it had previously adopted that interpretation in Order No. PSC-98-0449-FOF-EI). Here, the Petitioner seeks to create a new non-conforming use by converting motel structures into new residential apartments while retaining the prior motel’s master metering arrangement.

² This customer complaint was assigned Case Number 1427031E.

³ *See* Florida Administrative Register, Vol. 49, No. 220, available at:

<https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2023/49220/49220doc.pdf>.

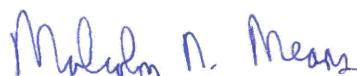
Case Assignment and Scheduling Record for this matter that indicates that the Commission will consider the Petition at the January 10, 2024, agenda conference. Tampa Electric stands ready to file written comments as soon as possible after intervention is granted, so the company's participation in this docket will not result in delay based on the current schedule.

19. Tampa Electric conferred with counsel for the Petitioner and is authorized to represent that the Petitioner does not oppose this motion so long as Tampa Electric agrees to a deadline for filing comments on the Petition and so long as the Petitioner is given an opportunity to respond to those comments. While the Commission controls the procedural schedule for this matter, Tampa Electric is willing to state that it is prepared to file comments as soon as possible after intervention is granted and would not object to a responsive filing by the Petitioner.

WHEREFORE, Tampa Electric respectfully requests that the Commission enter an Order granting the company the right to intervene in the above-captioned docket, and for all other relief as may be reasonable and proper.

DATED this 21st day of November 2023

Respectfully submitted,



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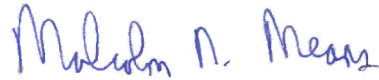
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion, filed on behalf of Tampa Electric Company, has been served by electronic mail on this 21st day of November 2023 to the following:

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