

Matilda Sanders

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
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To: Filings@psc.state.fl.us
Cc: CHRISTENSEN.PATTY; Jim Beasley; Lee Willis; Myron Rollins; Paula K. Brown
Subject: Filing - Docket No. 050958
Attachments: prehearing statement (3).doc

ORIGINAL

Phyllis W. Philip-Guide
 Sr. Administrative Assistant
 On behalf of Patricia A. Christensen and
 Office of Public Counsel
 111 W. Madison Street, Room 812
 Tallahassee, FL 32399-1400
 Email: Christensen.patty@leg.state.fl.us
 Phone: (850) 488-9330
 Fax: (850) 488-4491
www.floridaopc.gov

1. In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company
2. Attached for filing on behalf of Office of Public Counsel is OPC's Prehearing Statement (Docket No. 050958-EI).
3. There are a total of eleven (11) pages for filing.

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ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company

Docket No.: 050958-EI
Filed: February 14, 2007

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PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Orders Establishing Procedure in this docket, Order No. PSC-06-0800-PCO-EI, issued September 25, 2006, and Order No. PSC-06-0968-PCO-EI, issued November 20, 2006, hereby submit this Prehearing Statement.

APPEARANCES:

PATRICIA A. CHRISTENSEN, Esquire
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida.

1. **WITNESSES:**

Citizens prefiled testimony by the following witness:

Patricia W. Merchant: Ms. Merchant's testimony discusses the proper regulatory treatment for recovery of costs through base rates versus the clauses specifically the Environmental Cost Recovery Clause (ECRC).

Thomas A. Hewson, Jr.: Mr. Hewson's testimony evaluates the whether Tampa Electric Company's (TECO) Big Bend Flue Gas Desulfurization Program projects are necessary to meet the requirements of Consent Decree entered into between and the U.S.

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FPSC-COMMISSION CLERK

Environmental Protection Agency and the Florida Department of Environmental Protection or other qualifying environmental law or regulation that would be eligible for recovery through the Environmental Cost Recovery Clause (ECRC).

John B. Stamberg: Mr. Stamberg's testimony examines the Big Bend Flue Gas Desulfurization Program projects from an engineering prospective to determine whether these projects are necessary to meet the requirements of the Consent Decree or other qualifying environmental law or regulation that would be eligible for recovery through the ECRC.

2. EXHIBITS:

Witness for Citizens prefiled the following exhibits:

Patricia W. Merchant

(PWM-1) Curriculum Vitae

Thomas A. Hewson, Jr.

(TAH-1) Resume of Thomas A. Hewson Jr.

(TAH-2) TECO Phase I Flue Gas Desulfurization Plan

(TAH -3) TECO Phase II Flue Gas Desulfurization Plan

(TAH-4) TECO Quarterly Report – 3rd Quarter 2006 (Dated 10/27/06)

John B. Stamberg

(JBS-1) Resume of John B. Stamberg, P.E.

(JBS-2) Load Descriptions of New Electric Isolation Project

(JBS-3) Comparative Group A Outage Rates

(JBS-4) Comparison of The Project Cost, Net Present Value of Capital Expenditures, NPV of Savings, Net Savings and Cost Benefit Ratio of TECO's Assumptions

3. STATEMENT OF BASIC POSITION

Four of the Big Bend FGD System Reliability Program projects are not eligible for recovery through the ECRC. For a project to be eligible for recovery through the special environmental cost recovery, the project must be required to comply with an environmental law or regulation. The proposed electric isolation project, split inlet and outlet duct projects, and the gypsum fines filter project are not necessary or required to comply with Paragraph 40 of the Consent Decree, nor any other environmental law or regulation, and therefore are not eligible for recovery through the ECRC clause.

Section 366.8255, Florida Statutes, provides that electric utilities may petition the Commission for all of its prudently incurred costs that are necessary and required for complying with environmental laws or regulations for recovery through the ECRC. However, all costs recovered through base rates or other recovery mechanisms are required to be excluded from recovery through the ECRC clause. Under the current scheme, utilities have an incentive to roll as many costs as possible through cost recovery clauses, to avoid the necessity of absorbing those costs through base rates between rate cases.

Moreover, just because a cost may be environmentally related does not automatically qualify it for recovery through the cost recovery clause. Nor does the desirability of a project, which is not required, make that project eligible for ECRC recovery. As noted by the Commission in Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, projects, which may be warranted and even desirable for other reasons but which are not necessary to comply with any governmentally imposed environmental

compliance mandate, cannot be passed through in the ECRC clause. *Id.* at page 8. In other words, environmental projects which are discretionary in nature – not required to meet an environmental law or regulation – are not recoverable through the ECRC even if they would otherwise be recoverable through base rates.

TECO claimed that these four projects (electric isolation, split inlet and outlet ducts, and gypsum fines filter) were necessary to meet Paragraph 40 of the Consent Decree (CD). Paragraph 40 of the CD provides that the Big Bend Units 1- 3 may not run unscrubbed after January 1, 2010 (for Unit 3) and January 13, 2013 (Units 1 and 2).¹ Paragraph 40 does not address FGD system reliability, although TECO was required to identify projects which would improve reliability in its Phase I and Phase II Flue Gas Desulfurization (FGD) plans to the EPA.

Even in its Quarterly reports to the EPA regarding its compliance with the CD, TECO has placed these four projects under the modifications to the Big Bend units that are not required by the CD. Neither were these projects identified in TECO's Phase I or Phase II FGD plans for the Big Bend units, which identified projects necessary to comply with the CD. Simply stated, TECO does not need to make any of these four project modifications to run its current FGD systems in compliance with the current environmental laws or regulations.

The electric isolation projects for Units 1-4 are to provide a new transformer to power new Induced Draft (ID) fans. These ID fans are part of the boiler system and are only tangentially related to any environmental piece of equipment. Since the current transformer system has historically been highly reliable, the proposed transformer project will have no measurable effect on the reliability of the FGD system.

¹ Big Bend Unit 4 currently is required to operate scrubbed at all times.

The split inlet duct and outlet duct projects are not necessary to meet an environmental law or requirement as evidenced by TECO's original election to combine the Unit 3-4 inlet duct and outlet duct into one scrubber to reduce the environmental compliance costs. While the split duct projects are being done on environmental equipment, the modifications are purely discretionary in nature and have no substantive impact on the system reliability.

Finally, the gypsum fines filter project is a revamping of the gypsum disposal system to make a saleable byproduct and reduce landfill costs. However, the proposed modification is unnecessary for the operation of existing system, thus is discretionary in nature and not recoverable through the ECRC.

Because of the potential for abuse of the special mechanism, due to shifting costs which ought to be absorbed in base rates, vigilance is warranted to keep only those costs that are required to meet environmental laws or regulations flowing through the ECRC. Under close examination, none of the four disputed projects meets the strict statutory requirement necessary for special recovery under the ECRC.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Are the following projects in Tampa Electric Company's Big Bend FGD System Reliability Program costs or expenses incurred by Tampa Electric in complying with environmental laws or regulations and, therefore, entitled to be recovered under the environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes?

(a) Big Bend Units 1-4 electric isolation

* The electric isolation project for Big Bend Units 1-4 is not eligible for recovery through the ECRC because it is not required to meet an environmental law or regulation. The main function of the proposed electric isolation project is to provide a new transformer for the Induced Draft fans serving the boiler system, which is not an environmental system.*

The electric isolation project for Big Bend Units 1-4 is not eligible for recovery through the ECRC. For the cost of a project to be eligible for recovery through the special environmental recovery mechanism, the project must be required to comply with an environmental law or regulation. A discretionary project, which may be beneficial for other reasons, is not eligible for special recovery even though it may be appropriately recovered through base rates. Since the ECRC is a special recovery mechanism, the Commission must be vigilant in scrutinizing the costs which are passed through to customers using such a mechanism. The potential for abuse of the special mechanism, due to shifting costs which ought to be absorbed in base rates, warrants such vigilance. Under close examination, it is apparent that the electric isolation project is a project which should not be recovered through a special recovery mechanism.

The electric isolation project for Units 1-4 is to provide a new transformer to power new Induced Draft (ID) fans. These ID fans are part of the boiler system and are only tangentially related to any environmental piece of equipment. Since the current transformer system has historically been highly reliable, the proposed transformer project will have no measurable effect on the reliability of the FGD system. Finally, TECO itself has listed the first phase of this electric isolation project as not being required by the CD in its October 2006 Quarterly Compliance Report to the EPA.

(b) Big Bend Units 3-4 split inlet duct and outlet duct

The Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. The scrubber system's original combined duct system design - without the splitting of the inlet and outlet ducts - meets current environmental law. Thus, the split inlet duct and outlet duct projects are discretionary projects not entitled to special recovery treatment.

The Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. As noted in the previous issue, projects must be required to comply with environmental laws or regulations, not merely discretionary modifications to the plant, to warrant special recovery mechanism treatment. While base rate recovery may be appropriate if the project is reasonable and prudent, special recovery treatment is warranted only if the costs meet the strict requirement of the statute that the projects are necessary to comply with an environmental laws or regulations. The Commission should interpret this requirement narrowly; otherwise there is a great risk of abuse.

TECO originally elected to combine Units 3-4's inlet duct and outlet duct system into one existing scrubber to reduce its environmental compliance costs. The combination of two units into a common scrubber through common inlet duct and outlet duct work has been done by other utilities for compliance costs issues as well. While the splitting of the inlet duct and outlet duct work would allow maintenance of Units 3-4 without shutting down both units, it would not have a significant impact on the FGD system reliability. In other words, based on the historical data it has not been necessary and is unlikely to be necessary to operated one unit at a time for maintenance reasons. Finally, TECO acknowledges in its Quarterly Compliance reports to the EPA that this project is not related to the CD.

(c) Gypsum fines filter

* The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. The gypsum fines

filter project is being done to make a saleable by-product and reduce landfill costs. As such, while commendable, the cost is not being incurred to comply with an environmental law or regulation.*

The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. As noted previously, the Commission found that a project, which may be warranted and even desirable for other reasons but which is not necessary to comply with any governmentally imposed environmental compliance mandate, cannot be passed through in the ECRC clause. Restated, a discretionary environmental project is not recoverable through the ECRC even if it would otherwise be recoverable through base rates.

The FGD systems were originally designed to produce a gypsum by-product for disposal. The existing system is operating within its original design parameters, thus, meeting existing environmental laws and regulations. The new gypsum fines filter project is designed to produce a saleable by-product and reduce landfill disposal costs. While it may make economic sense for TECO to invest in the filter to reduce landfill costs, it is not required by the CD. Therefore, this is a discretionary project which is not entitled to special recovery treatment.

ISSUE 2: How should the following remaining projects in Tampa Electric Company's Big Bend FGD System Reliability Program be recovered?

- (a) Big Bend Units 1-4 Mist Eliminator Upgrades
- (b) Big Bend Units 1-4 On-line Mist Eliminator Wash System
- (c) Big Bend Units 1-4 On-line Nozzle Wash System
- (d) Gypsum Filter Vacuum Pump Upgrades
- (e) Big Bend Units 1-2 Gypsum Blow Down Line
- (f) Controls Additions

- (g) Big Bend Units 3-4 FGD Booster Fan Capacity Expansion
- (h) Big Bend Units 1-2 Recycle Pump Discharge Isolation Bladders
- (i) Big Bend Units 1-2 Inlet Duct C-276 Wallpaper

Tampa Electric Company's proposed stipulation as to Issue 2:

The costs of the projects listed under this Issue 2 should be recovered through the Big Bend FGD System Reliability (New) ECRC Program, the Big Bend Units 1 and 2 FGD (Existing) ECRC Program and through base rates, allocated among the three methods of recovery in the manner shown in the chart entitled "Big Bend Flue Gas Desulfurization System Reliability Program Recovery of Expenditures-Revised" filed on March 16, 2006 by Tampa Electric, a copy of which is attached hereto and by reference made a part hereof.

OPC: OPC agrees that the remaining Big Bend FGD System reliability projects (excluding the electric isolation, split inlet and outlet ducts, and gypsum fines filter projects) should be recovered in the manner outlined in the chart entitled "Big Bend Flue Gas Desulfurization System Reliability Program Recovery of Expenditures-Revised" filed on March 16, 2006. However, Citizens does not stipulate to the reasonableness or prudence of costs or expenses that are identified as recoverable through base rates or that are subsequently recovered through base rates since issues related to base rate recovery are outside the scope of this petition. As noted in TECO March 16, 2006 filing, two of the items have been identified for recovery through base rates.

5. STIPULATED ISSUES:

None.

6. PENDING MOTIONS:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

Citizens have no pending requests for claims for confidentiality.

8. OBJECTIONS TO QUALLIFICATION OF WITNESSESAS AN EXPERT:

Citizens do not expect to challenge the qualification of any direct testimony witness. Rebuttal testimony has not yet been filed.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING
PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 14th day of February, 2007.

Respectfully submitted,

s/Patricia A. Christensen
Patricia A. Christensen
Florida Bar No. 0989789
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 14th day of February, 2007, to the following:

Lee L. Willis
James D. Beasley
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Myron Rollins
Black & Veatch Corporation
11401 Lamar Avenue
Overland Park, KS 66211

Brenda Irizarry
Tampa Electric Company
P.O. Box 111
Tampa, FL 33601-0111

Martha Brown
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

s/Patricia A. Christensen
Patricia A. Christensen
Associates Public Counsel