

Ruth Nettles

090368 - EI

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Tuesday, January 12, 2010 4:05 PM
To: Filings@psc.state.fl.us; 'khatcher@baskervilledonovan.com'; 'Jim Beasley'; 'vkaufman@kagmlaw.com'; 'jmcwhirter@mac-law.com'; 'jmoyle@kagmlaw.com'; 'regdept@tecoenergy.com'
Cc: CHRISTENSEN.PATTY; DAVIS.PHYLLIS
Subject: 090368-EI Petition Protesting Portions of the Proposed Agency Action and Motion for Clarification
Attachments: 090368-EI Protest and Motion for Clarification (F).1docx.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Patricia A. Christensen, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
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b. Docket No. 090368-EI

In Re: Reviews of the continuing need and cost associated with Tampa Electric Company's 5 Combustion Turbines and Big Bend Rail Facility.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 5 pages.

e. The document attached for electronic filing is Citizens' Petition Protesting Portions of the Proposed Agency Action and Motion for Clarification

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DOCUMENT NUMBER-DATE

00284 JAN 12 09

1/12/2010

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Reviews of the continuing need
and Cost associated with Tampa
Electric Company's 5 Combustion
Turbines and Big Bend Rail Facility
_____ /

Docket No.: 090368-EI

Filed: January 12, 2009

**PETITION PROTESTING PORTIONS OF THE PROPOSED AGENCY ACTION AND
MOTION FOR CLARIFICATION**

The Citizens of the State of Florida (Citizens), by and through undersigned counsel, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, 28-106.204, Florida Administrative Code, file this protest to the Florida Public Service Commission's (Commission) Order No. PSC-09-0842-PCO-EI, issued December 22, 2009, and Motion for Clarification. In that Order, the Commission authorized Tampa Electric to implement a revised step increase of \$25,742,209, subject to refund and setting the matter for administrative hearing. In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No.: 050958-EI

2. The Citizens include the customers of Tampa Electric whose substantial interests will be affected by the Order because the Order authorizes Tampa Electric to collect from its customers the proposed rate increase subject to refund.

DOCUMENT NUMBER-DATE

00284 JAN 12 09

FPSC-COMMISSION CLERK

3. Pursuant to Section 350.11, Florida Statutes, the Citizens who file this Petition are represented by the Office of Public Counsel (“Citizens” or “OPC”) with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. : (850) 488-9330

4. The Citizens obtained a copy of the Order from the Commission’s website on December 29, 2009.

5. At this time the disputed issues of material facts, including a concise statement of the ultimate facts alleged and those facts which Citizens contend warrant reversal and/or modification of the agency’s proposed action are discussed below. Citizens contend that the step increase, even subject to refund, approved in Order No. PSC-09-0842-EI, violates Final Order No. 09-0283-FOF-EI, issued April 30, 2009, that sets forth the conditions under which the Commission would approve the step increase. In the Final Order at page 6, the Commission stated that “[t]his step increase is based upon the condition that the units **must** be needed for load generation.” There is no dispute that Tampa Electric placed all five CTs into service. However, there is a dispute as to whether all five CTs are needed for load requirement.

In Order No. PSC-09-0842-PCO-EI, the Commission stated “[w]e believe questions remain regarding whether all of the five CTs were needed for load generation as required by the Final order in the rate case and confirmed by the Order on Reconsideration.” Despite this finding and the explicit language of the Final Order that no step increase would be approved unless it was shown the CTs were needed for load generation, the Commission approved the

step-increase. There is a dispute as to the implementation of the step-increase prior to the Company making a showing that the CTs are need for load generation.

In addition, there is a dispute that the Commission in setting this matter for hearing used justifications that were not part of the Final order criteria to justify allowing the step increase to go forward (immediate fuel cost savings and long term reliability benefits). Thus, the scope of the review is beyond what was contemplated in the Final Order (need for load generation, and in service).

6. The scope of the administrative hearing should be limited to whether the criteria set forth in the Final Order (placed in service and needed for load generation) have been met and, and if so, how to apply any step increase. In the alternative, if the Commission intends to consider the fuel savings and long term system reliability benefits as issues, then all issues should be permitted, including but not limited to, the Company proving its need for recovery because it is earning outside its authorized ROE. Based upon the inclusion of the additional justifications, beyond the criteria set forth in the Final Order, Citizen requests the Commission clarify the scope of the proceeding.

7. Protests of the Order shall be filed with the clerk of the Office of Commission Clerk no later than close of business on January 12, 2009. This Petition has been timely filed.

8. Citizens have contacted the parties to this proceeding. FIPUG has no objection to the motion. Tampa Electric objects to the motion to the extent it seeks to expand the scope of the hearing beyond that stated in the Final Order, Order on Reconsideration in Docket 080317-EI and Order No. 09-0842-PCO-EI and reserves its right to file a written response to the motion. Commission Staff do not take positions on motions filed by parties.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-09-0842-PCO-EI, as provided above, and petition the Commission to conduct a formal evidentiary hearing, under the provisions of Section 120.57(1), Florida Statutes. Further, Citizens requests clarification.

Respectfully Submitted,

JR Kelly
Public Counsel



Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789
Office of the Public Counsel
c/o The Florida Legislature
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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action and Motion for Clarification had been furnished by electronic mail and U.S. Mail on this 12th day of January, 2010, to the following:

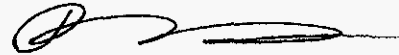
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