



## P R O C E E D I N G S

1  
2           **CHAIRMAN BROWN:** Now we're circling back to  
3 Item 5. Good morning.

4           **MS. MTENGA:** Good morning. I'm Moni Mtenga  
5 with Commission staff.

6           Item No. 5 is Tampa Electric Company's  
7 petition for approval of the preliminary engineering  
8 study for cost recovery through the Environmental Cost  
9 Recovery Clause. The request is similar to a project  
10 approved for Gulf Power Company in 2015.

11           The item addresses TECO's proposed Effluent  
12 Limitations Guidelines, ELG, Compliance Study at their  
13 Big Bend Station. This study will analyze what measures  
14 TECO can take to bring Big Bend into ELG compliance.

15           This petition will be subjected to a prudence  
16 review when submitted through the ECRC. Once the cost  
17 of complying with the ELG rule is known, TECO could wish  
18 to waive these -- those costs compared to an early  
19 retirement of the Big Bend Unit. Staff recommends  
20 approval of this petition and is available to answer any  
21 questions.

22           Sierra Club filed comments in this docket, and  
23 Stephanie Kunkel is here to summarize comments and speak  
24 on their behalf. The utility is also here to answer any  
25 questions.

1           **CHAIRMAN BROWN:** Thank you very much. I'll go  
2 to Mr. Beasley first, if you'd like to make an opening  
3 or reserve your comments for after.

4           **MR. BEASLEY:** Thank you, Madam Chair,  
5 Commissioners. I'm Jim Beasley for Tampa Electric  
6 Company. With me is Penelope Rusk, who is Tampa  
7 Electric's manager of rates.

8           We support your staff's recommendation. This  
9 is a preliminary study, as the staff indicated. It's  
10 designed to ensure that the compliance measures  
11 ultimately selected by the company are the most  
12 cost-effective and efficient means of compliance.

13           And as our petition indicates, once we develop  
14 the ultimate plan, we will bring it back for your  
15 approval. This is only a preliminary step, but we  
16 wanted to bring it before you and follow up later with  
17 our request regarding the actual implementation program.  
18 So we would urge you approve the staff recommendation,  
19 and we'll be happy to answer any questions you have.

20           **CHAIRMAN BROWN:** Thank you.

21           Ms. Kunkel, welcome. We've all received your  
22 comments, but you have the floor.

23           **MS. KUNKEL:** Yes. Thank you, Madam Chair.  
24 Good morning, Chair Brown, Commissioners. I'm here on  
25 behalf of the Sierra Club to recap comments filed on

1 TECO's new environmental compliance program for the Big  
2 Bend coal plant and to address any related questions  
3 that you may have for Sierra Club.

4 The comments explain that as TECO prepares for  
5 what it will take to continue burning coal at Big Bend  
6 to generate electricity, that we have serious concerns  
7 that TECO is failing the prudence test under the  
8 Environmental Cost Recovery Clause. Across the board,  
9 coal plants have lost whatever economic edge they once  
10 had, so in this market, coal plant operators have to be  
11 extra careful about what they do in these plants to  
12 protect their customers from imprudent costs.

13 At Big Bend, TECO estimates it will soon cost  
14 more than half a billion dollars to continue burning  
15 coal in compliance with the EPA rules. A prudent  
16 utility would reconcile these huge looming costs with  
17 its near-term compliance activities, and a prudent  
18 utility would also make sure it has a full accounting of  
19 all of the costs and risks facing Big Bend so that it  
20 can effectively manage them on its customers' behalf,  
21 yet TECO shows no sign of acting prudently in this  
22 docket.

23 As stressed in the comments filed by Sierra  
24 Club, TECO's own compliance cost estimate of more than  
25 half a billion dollars does not include several EPA

1 rules such as the Effluent Limitations Guidelines, the  
2 Startup, Shutdown, Malfunction Rule, and the Clean Power  
3 Plan, and TECO has not explained why its new study  
4 focused on ELG compliance differs from past studies on  
5 Big Bend ELG compliance or gets us any closer to  
6 understanding how Big Bend will fare, given the  
7 continuum of the EPA rules.

8 So the main problem here, Commissioners, is  
9 TECO's plan to study one rule at a time misses the big  
10 picture, but a coal phaseout is likely the best  
11 compliance option overall, saving customers needless  
12 regulatory compliance costs. That's why we're here at  
13 this early stage where the Commission can still head off  
14 the huge costs and get TECO on the right track to  
15 low-cost, low-risk resources for serving their  
16 customers.

17 Now TECO may try to reassure us today that it  
18 will address the serious concerns raised by our  
19 comments, but the Commission and TECO's customers need  
20 more than verbal reassurances. It was TECO's burden to  
21 show the prudence of its compliance activities in the  
22 docket. Trying to make this showing now undercuts  
23 staff's, stakeholders', and ultimately Your Honors'  
24 ability to independently evaluate TECO's plan.

25 And for these reasons, Sierra Club

1 respectfully requests that you deny TECO's petition,  
2 that you direct TECO to study phasing out coal, and deny  
3 any cost recovery for the Big Bend ELG Study Program so  
4 long as TECO fails to plan for a coal phaseout as a  
5 compliance pathway. And I'll close there and say if you  
6 have any questions, I'm happy to answer them.

7 **CHAIRMAN BROWN:** Thank you, Ms. Kunkel.

8 Mr. Beasley.

9 **MR. BEASLEY:** I would, Madam Chair, like to  
10 address one point in the Sierra Club letter.

11 On page 3 they discuss some prior studies that  
12 were conducted. Those were conducted in the period of  
13 2010 through 2013. They were really point-in-time  
14 industry studies. They were data gathering requests in  
15 which the EPA asked various utilities across the country  
16 that have FGD systems to provide information about those  
17 systems, what systems they have, what technologies were  
18 being used, what effluent streams they were treating,  
19 and what the impact of that was. Those studies were  
20 used by EPA to develop the guidelines that we're now  
21 addressing, and the studies that were performed back in  
22 that time frame could not have addressed the guidelines  
23 we're now addressing because they were not really  
24 published until November of this past year. So that's  
25 what we're focusing on now is how to comply going

1 forward with the new guidelines that have been  
2 established.

3 **CHAIRMAN BROWN:** Thank you.

4 Commissioner Edgar.

5 **COMMISSIONER EDGAR:** Thank you.

6 And Mr. Beasley partially answered one of the  
7 questions I was going to ask, which is how is this study  
8 different from those studies and information gathering  
9 and analysis that has been done in the past?

10 I would also point out for the record that,  
11 with all respect, Mr. Beasley, to your expertise, I  
12 think you glossed over a little bit what it is that is  
13 before us today. Yes, as you said, it is a preliminary  
14 study, but, Commissioners, we are not being asked to  
15 approve the study. And thank goodness, because there is  
16 incredibly little and very vague information before us  
17 about what the study actually is and what it will  
18 accomplish and how it is different from the information  
19 that has already been gathered and analyzed. What is  
20 being asked for us to approve is cost recovery of this  
21 study.

22 And I had a long discussion with staff about  
23 this in my briefing earlier this week, and I'm still  
24 unclear and would pose this to staff initially and then,  
25 of course, to the company as to how I can be assured

1 that this type of study is not currently covered in base  
2 rates.

3 **MR. BEASLEY:** Well --

4 **COMMISSIONER EDGAR:** Actually I'd like to hear  
5 from staff first, Mr. Beasley.

6 **MR. BEASLEY:** Sure.

7 **COMMISSIONER EDGAR:** Thank you. And then  
8 certainly I would like to hear from you as well, if the  
9 Chairman is fine with that.

10 **MR. BALLINGER:** Commissioner Edgar, Tom  
11 Ballinger with staff.

12 In the past, we've had some costs requested  
13 through the ECRC that were difficult to determine if  
14 they were recovered in base rates such as litigation  
15 costs. That is a, kind of a generic cost that's in base  
16 rates that could cover environmental as well, and that's  
17 very difficult to ascertain.

18 This one, though, since it is specific studies  
19 to a new regulation that has just now been promulgated,  
20 I think staff is very certain that it's not being  
21 recovered in current base rates.

22 **COMMISSIONER EDGAR:** That's certainly not what  
23 you told me earlier this week.

24 **MR. BALLINGER:** No, I had --

25 **COMMISSIONER EDGAR:** And so what is certain



1 now?

2 **MR. BALLINGER:** That I had to go back and look  
3 at it to see what it was covering. I believe too  
4 when -- if you have a study come -- a rule come out now,  
5 there's no way you could have anticipated studies  
6 specific to that.

7 **COMMISSIONER EDGAR:** Really?

8 **MR. BALLINGER:** Yes.

9 **COMMISSIONER EDGAR:** No way you could  
10 anticipate during the rule process what that rule would  
11 require?

12 **MR. BALLINGER:** I'm not saying that. I'm  
13 saying --

14 **COMMISSIONER EDGAR:** I think that's what you  
15 just said.

16 **MR. BALLINGER:** -- in your current -- in your  
17 current base rates, you do not have --

18 **COMMISSIONER EDGAR:** They're not my base  
19 rates.

20 **MR. BALLINGER:** In your current recovery of  
21 expenses, I don't think you --

22 **COMMISSIONER EDGAR:** It's not my recovery  
23 either.

24 **MR. BALLINGER:** I believe that when the rule  
25 is passed, you do not know what the rule is requiring,

1 so I don't see how you could have in your base rates  
2 costs for a study to address that. Litigation costs,  
3 yes, those could be included in base rates. Lobbying  
4 costs to help formulate rules, yes, that could be  
5 included in base rates currently and currently be  
6 recovered. I think this is very specific to response to  
7 a rule with specific regulations.

8 **COMMISSIONER EDGAR:** Okay. What -- I'm not  
9 sure where you're -- what path you're going down, but  
10 it's not the one that I'm trying to focus on. I'm not  
11 sure what lobbying costs and litigation costs have to do  
12 with my question, which is how can I be assured that the  
13 information gathering and analysis that supposedly this  
14 study is going to do is not the type of course of  
15 business work that is included in base rates?

16 **MR. BALLINGER:** It can be reviewed again when  
17 it comes up for recovery to be absolutely certain.

18 **COMMISSIONER EDGAR:** What would be reviewed  
19 when it comes for recovery?

20 **MR. BALLINGER:** The cost of the study.

21 **COMMISSIONER EDGAR:** So if we approve cost  
22 recovery for this study, you're saying that we're not  
23 really approving it today?

24 **MR. BALLINGER:** We are approving them going  
25 forward with it. The costs will be reviewed when they

1 come in actually for recovery through the ECRC.

2 **COMMISSIONER EDGAR:** Okay. How will we --  
3 what additional information will we have then that will  
4 assure me that this is not the normal course of business  
5 that is included in base rates?

6 **MR. BALLINGER:** We can audit the costs, we can  
7 look closely at the scope of it to determine then was  
8 this scope included in other R&D efforts, let's say,  
9 data gathering, things of that nature.

10 **COMMISSIONER EDGAR:** Commissioners, I would --  
11 if you may indulge me for just a moment. Not ten  
12 minutes, just two.

13 Back in 2005, I wrote a dissent, yes, a  
14 dissent in 2005, my first year here as a Commissioner,  
15 on a request for costs to be recovered through the  
16 Environmental Cost Recovery Clause by FPL. And my  
17 concern at that time was that it was very -- and that  
18 did involve litigation costs -- that it was unclear with  
19 the information that we had whether that amount, which I  
20 termed as de minimis, was included in the normal  
21 litigation, law type costs that are included in base  
22 rates.

23 I would just opine for a moment -- and I'll  
24 note that that was a 4-1 vote and I was the one in  
25 dissent, so it was ultimately approved. However, the

1 concern I raised then is a concern that I've had over  
2 the past years and I think is even more relevant today  
3 as we, as a Commission and the industries that we  
4 regulate, are looking at potentially, due to new and  
5 incoming and potential federal regulations in the  
6 environmental area, additional costs that may be  
7 requested for cost recovery, and appropriately so,  
8 through the Environmental Cost Recovery Clause.

9           And I think it is our responsibility, working  
10 with our staff closely, to ask the questions as to where  
11 that line is through what is already recovered, allowed  
12 for recovery through the rate cases and the rates that  
13 we have approved and those that are then requested on  
14 top of that through recovery through, in this instance,  
15 the Environmental Cost Recovery Clause, but certainly  
16 any clause that we review cost recovery costs for.

17           I had a number of questions about this item  
18 along those lines in my briefing, have -- think that  
19 more information could have and should have been  
20 forthcoming; however, with that, I certainly, again,  
21 believe that requests through the Environmental Cost  
22 Recovery Clause for work in -- that is required to meet  
23 federal and state environmental mandates and  
24 requirements is appropriate and should be received --  
25 reviewed. I would just ask that our staff give us a

1 little more information along those lines in advance.

2 **CHAIRMAN BROWN:** Thank you.

3 Commissioners, any other questions?

4 I have a question for TECO. I had similar  
5 questions in my briefing as well as just what are these  
6 costs being used for? It just says O&M. We approved  
7 Gulf Power's in this past year's fuel -- pardon me --  
8 Environmental Cost Recovery Clause proceeding, and  
9 they -- I think we approved about 175,000 for the  
10 preliminary engineering studies associated with this  
11 program. I'm just curious why yours is 400,000 and what  
12 those costs are really going to be for.

13 **MR. BEASLEY:** Well, it'll be, Madam Chair, a  
14 two-phase program. Phase 1 will review all of the  
15 various requirements that we face, what our current  
16 status is with our equipment and facilities, and Phase 2  
17 will come along and design an engineering proposal based  
18 on the evaluation conducted in Phase 1. We're looking  
19 to have that done by an outside consultant who's very  
20 versed in this area. It's obviously an incremental cost  
21 to the company. It's something that was not included in  
22 our last rate proceeding, and it's certainly something  
23 that's an incremental new requirement that was  
24 published, as I said, November 3rd of last year. So  
25 those costs are certainly the kinds of costs that we

1 have to incur.

2 You'll certainly have a chance to look at them  
3 in the environmental cost recovery proceedings. By your  
4 approving them today does not necessarily say that those  
5 costs are -- those engineering estimate costs are the  
6 bottom line of what we'll spend, but they're certainly  
7 something that'll come back before you and you'll have a  
8 chance to scrutinize at a future time.

9 **CHAIRMAN BROWN:** Thank you.

10 Commissioners, any other questions?

11 Commissioner Edgar.

12 **COMMISSIONER EDGAR:** So the \$100,000 that  
13 you're requesting for cost recovery above base rates for  
14 this year's portion, one-fourth of the requested amount  
15 for cost recovery is to review current equipment? Is  
16 that what I heard you say?

17 **MR. BEASLEY:** For current -- current effluent  
18 flows and streams.

19 **COMMISSIONER EDGAR:** You don't have that  
20 information already? And why isn't that the sort of  
21 work that would be done again in the normal course of  
22 business?

23 **MR. BEASLEY:** It also includes, I'm advised,  
24 to examine all the potential control technologies and  
25 how they might be applied to what we have to do to

1 comply with this rule.

2           **COMMISSIONER EDGAR:** Okay. I don't see that  
3 anywhere here, but that's a much more satisfying answer.  
4 Thank you.

5           **MR. BEASLEY:** Thank you.

6           **CHAIRMAN BROWN:** Thank you.

7           Commissioners, any other questions?

8           Commissioner Graham.

9           **COMMISSIONER GRAHAM:** I was just going to move  
10 staff recommendation on all items -- all issues.

11           **CHAIRMAN BROWN:** Is there -- thank you.

12           Is there a second?

13           All those in favor, say aye.

14           (Vote taken.)

15           Opposed? All right. The motion passes.

16 Thank you.

17           (Agenda item concluded.)

1 STATE OF FLORIDA )  
2 COUNTY OF LEON ) : CERTIFICATE OF REPORTER

3  
4 I, LINDA BOLES, CRR, RPR, Official Commission  
5 Reporter, do hereby certify that the foregoing  
6 proceeding was heard at the time and place herein  
7 stated.

8 IT IS FURTHER CERTIFIED that I  
9 stenographically reported the said proceedings; that the  
10 same has been transcribed under my direct supervision;  
11 and that this transcript constitutes a true  
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,  
14 employee, attorney or counsel of any of the parties, nor  
15 am I a relative or employee of any of the parties'  
16 attorney or counsel connected with the action, nor am I  
17 financially interested in the action.

18 DATED THIS 13th day of June, 2016.

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