

BEFORE THE FLORIDA 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. 20210087-EI  
ORDER NO. PSC-2021-0356-PAA-EI  
ISSUED: September 15, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman  
ART GRAHAM  
ANDREW GILES FAY  
MIKE LA ROSA  
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING NEW ENVIORNMENTAL PROGRAM FOR COST RECOVERY  
THROUGH ENVIRONMENTAL COST RECOVERY CLAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission (Commission) that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**Case Background**

On April 21, 2021, Tampa Electric Company (TECO or Company) filed a petition with this Commission to approve the Bayside Station Section 316(b) Compliance Project (Project) for cost recovery through the Environmental Cost Recovery Clause (ECRC). In its petition, TECO states that the project is required to comply with the Environmental Protection Agency's (EPA) final rule regarding Section 316(b) of the Clean Water Act.

The EPA adopted a rule pursuant to Section 316(b) of the Clean Water Act on September 7, 2004. This rule established requirements for reducing mortality of aquatic organisms as a result of cooling water intake structures (CWIS) at existing power plants. In 2004, TECO requested our approval for cost recovery through the ECRC for a Comprehensive Demonstration

Study, which was needed to comply with the new Section 316(b) rule. Cost recovery for the study was approved by us in Docket No. 20041300-EI.<sup>1</sup>

The 2004 Section 316(b) rule changes were challenged and the EPA published a final rule regarding Section 316(b) (EPA Rule or Rule) on August 15, 2014, which outlined the requirements for CWIS at existing facilities.<sup>2</sup> The EPA Rule requires that the best technology available be applied to the design and operation of CWIS to minimize adverse impacts to aquatic life. In 2018, TECO petitioned us for cost recovery through the ECRC for its Big Bend Unit 1 Section 316(b) Impingement Mortality project in order to comply with the EPA Rule. We approved ECRC cost recovery for the Big Bend project by Order No. PSC-2018-0594-FOF-EI, issued December 20, 2018.<sup>3</sup> The proposed Bayside Station Section 316(b) Compliance Project is substantially similar to the previously approved Big Bend Unit 1 Section 316(b) Impingement Mortality project.

Pursuant to Section 366.8255, Florida Statutes (F.S.), the Florida Legislature authorized the recovery of prudently incurred investor-owned electric utility environmental compliance costs through the ECRC. The method for cost recovery for such costs was first established by Order No. PSC-94-0044-FOF-EI, issued on January 12, 1994.<sup>4</sup> We have jurisdiction over this matter pursuant to Section 366.8255, F.S.

### **Review and Decision**

The EPA Rule establishes requirements for CWIS at existing facilities. The Rule requires that the best technology available be applied to the design and operation of CWIS to minimize impingement mortality<sup>5</sup> and entrainment<sup>6</sup> of aquatic life. The Rule allows for seven different approaches for impingement mortality compliance. For entrainment compliance, the Rule requires the evaluation of closed-cycle cooling, alternative water supplies, and fine mesh screens for a site-specific determination by the Florida Department of Environmental Protection (DEP) Director. In addition, the Rule requires that a Compliance Optimization Study be performed once the Project is in-service to validate the effectiveness of the Project.

In its petition, TECO states that it evaluated its compliance options and identified modified traveling screens with a fish return as the most cost-effective solution to comply with the EPA Rule. TECO also states that its Project is required to comply with the impingement mortality requirements of the Rule. While the Project may also reduce the entrainment of aquatic

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<sup>1</sup> Order No. PSC-05-0164-PAA-EI, issued February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company.*

<sup>2</sup> Federal Register, Volume 79, No. 158, pp. 48300-48439, codified at Title 40, Part 125, Subpart J, Code of Federal Regulations.

<sup>3</sup> Order No. PSC- 2018-0594-FOF-EI, issued December 20, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause.*

<sup>4</sup> Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0285, Florida Statutes by Gulf Power Company.*

<sup>5</sup> Impingement mortality occurs when aquatic life are pinned against the CWIS screens.

<sup>6</sup> Entrainment occurs when small aquatic life pass through the CWIS screens and enter the cooling system.

life, entrainment compliance must be determined after the Project is in-service, based on the DEP Director's review of the Project's performance. If the DEP Director determines that additional improvements are needed to meet entrainment requirements, TECO intends to address them through a subsequent petition.

The work to be completed includes retrofitting existing coarse mesh screens with modified traveling screens and the installation of two return pipes to release fish away from the influence of the CWIS. We note that this project is substantially similar to TECO's Commission-approved Big Bend Unit 1 Section 316(b) Impingement Mortality Project.<sup>7</sup> Engineering work for the Bayside Station Section 316(b) Compliance Project will begin near the end of 2021, construction in the third quarter of 2022, and is expected to be placed in-service in the fourth quarter of 2023.

The estimated cost for the Project is \$10.1 million, including the compliance optimization study, as seen in Table 1. The Project has an expected service life of 20 years, with annual in-service operation and maintenance (O&M) costs of \$512,000 beginning in 2024. The costs in Table 1 were developed by TECO based on actual costs from TECO's Big Bend Unit 1 Section 316(b) Impingement Mortality Project. Labor costs from central Florida were used along with estimates on the major equipment such as the traveling screens. A draft layout of the fish return system was created, and material requirements were estimated. Further, Table 2 shows the estimated annual impact of the Project on residential customer bills.

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<sup>7</sup> Order No. PSC- 2018-0594-FOF-EI, issued December 20, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause*.

**Table 1**  
**Estimated Capital and O&M Costs**

|                                      | 2021<br>(\$000) | 2022<br>(\$000) | 2023<br>(\$000) | 2024<br>(\$000) | 2025<br>(\$000) | Total<br>(\$000) |
|--------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| <b>Capital</b>                       |                 |                 |                 |                 |                 |                  |
| Engineering                          | 375             | 75              | 75              | -               | -               | 525              |
| Equipment                            | 450             | 4,425           | 1,125           | -               | -               | 6,000            |
| Construction                         | -               | 1,850           | 750             | -               | -               | 2,600            |
| Owners Costs                         | 125             | 125             | 125             | -               | -               | 375              |
| Demolition / Retirement              | -               | 30              | 30              | -               | -               | 60               |
| Total Capital                        | 950             | 6,505           | 2,105           | -               | -               | 9,560            |
| <b>Compliance Optimization Study</b> | -               | -               | -               | 270             | 270             | 540              |
| <b>In-Service Annual O&amp;M</b>     |                 |                 |                 |                 |                 |                  |
| Variable O&M                         | -               | -               | -               | 134             | 134             | N/A              |
| Operating Labor                      | -               | -               | -               | 50              | 50              | N/A              |
| Maintenance Material                 | -               | -               | -               | 198             | 198             | N/A              |
| Maintenance Labor                    | -               | -               | -               | 130             | 130             | N/A              |
| Total O&M                            | -               | -               | -               | 512             | 512             | N/A              |

Source: TECO's petition

**Table 2**  
**Residential Bill Impact**  
(1,000 kWh Monthly Usage)

| Year | Estimated Annual Impact |
|------|-------------------------|
| 2022 | \$ 0.162                |
| 2023 | \$ 0.050                |
| 2024 | \$ 0.320                |
| 2025 | \$ 0.004                |

Source: TECO's response to our staff's third data request, no. 2

Based on TECO's petition and the Company's responses to our staff's data requests,<sup>8</sup> we find that TECO's ECRC Project is necessary for compliance with the EPA Rule. Our criteria for ECRC recovery relevant to this docket, established by Order No. PSC-94-0044-FOF-EI, are:

- (1) The activities are legally required to comply with governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and
- (2) None of the expenditures are being recovered through some other cost recovery mechanism or through base rates.

<sup>8</sup> Document Nos. 04587-2021, 07715-2021, and 08704-2021 dated June 8, July 12, and August 4, 2021, respectively.

We find that the activities proposed in TECO's petition meet these criteria. These activities are necessary for TECO to comply with governmentally imposed environmental regulation. The need for the above-referenced compliance activities were triggered after TECO's last test year upon which rates are currently based.<sup>9</sup> Specifically, the need for these activities was triggered by the renewal of the facility's National Pollutant Discharge Elimination System Permit, which requires compliance with the EPA Rule. Finally, the costs of the proposed compliance activities are not currently being recovered through some other cost recovery mechanism or through base rates. We note that the reasonableness and prudence of individual expenditures related to the Project will continue to be subject to our review in future ECRC proceedings.

In conclusion, we hereby find that TECO's Bayside Station Section 316(b) Compliance Project is necessary to comply with the EPA's Section 316(b) Rule. Consistent with prior ECRC orders, O&M costs associated with the Project shall be allocated to appropriate rate classes on an energy basis and capital costs shall be allocated on a demand basis.<sup>10</sup>

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's petition for approval of the Bayside Station Section 316(b) Compliance Project for cost recovery through the Environmental Cost Recovery Clause is approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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<sup>9</sup> On August 6, 2021, a joint Stipulation and Settlement Agreement between TECO and intervening parties was filed in Docket No. 20210034-EI. The hearing for TECO's current rate case is set for October 21, 2021, by Order No. PSC-2021-0301-PCO-EI. The costs of the Project are not included in the Settlement Agreement.

<sup>10</sup> Order No. PSC-2017-0483-PAA-EI, issued December 22, 2017, in Docket No. 20170168-EI, *In re: Petition for approval of the second phase of CCR program for cost recovery through the environmental cost recovery clause, by Tampa Electric Company*, Order No. PSC-16-0248-PAA-EI, issued June 28, 2016, in Docket No. 20160027-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company*.

By ORDER of the Florida Public Service Commission this 15th day of September, 2021.



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ADAM J. TEITZMAN  
Commission Clerk  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
(850) 413-6770  
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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.

AJW

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on October 6, 2021.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.