

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** November 30, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Mtenga, Ellis) *WMM*  
Division of Economics (Wu) *POE*  
Office of the General Counsel (Murphy, Cuello) *WLC* *TS* *SHC* *MT*

**RE:** Docket No. 20170168-EI-Petition for approval of the second phase of CCR program for cost recovery through the environmental cost recovery clause, by Tampa Electric Company.

**AGENDA:** 12/12/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

On July 28, 2017, Tampa Electric Company (TECO or Company) petitioned the Florida Public Service Commission (Commission) to approve the second phase of its Coal Combustion Residuals Compliance Program (CCR Program) for cost recovery through the Environmental Cost Recovery Clause (ECRC). The first phase of TECO's CCR Program was approved in Docket 20150223-EI, and included activities such as dust control, inspections, groundwater monitoring, and engineering evaluations of other compliance measures.<sup>1</sup> TECO has determined

<sup>1</sup>Order No. PSC-16-068-PAA-EI, issued February 9, 2016, in Docket No. 20150223-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.*

that the Big Bend Economizer Ash & Pyrites Ponds (EAPP), one of its CCR management units, must be closed in order to comply with the provisions of the CCR Rule.

On April 17, 2015, the United States Environmental Protection Agency (EPA) published its CCR Rule which established the minimum criteria for the safe disposal in new and existing surface impoundments and landfills of CCR generated from the combustion of coal at electric utilities and independent power producers.<sup>2</sup> The effective date of the Rule was October 19, 2015, and the Rule is self-implementing. The second phase of TECO's program was developed in response to the EPA's CCR Rule.

In the 2017 Environmental Cost Recovery Docket, the Commission approved the following stipulation regarding Phase II of the TECO CCR Program:

Approval of the projected revenues for the costs associated with the Phase II of the CCR Program is conditioned on this Commission's approval of the CCR Program in Docket No. 20170168-EI. To the extent the scope of the CCR Program costs differ from costs of the approved program in Docket No. 20170168-EI, the revenues collected for the CCR Program in Docket No. 20170007-EI shall be subject to true-up.

By Section 366.8255, Florida Statutes (F.S.), the Florida Legislature authorized the recovery of prudently incurred environmental compliance costs through the environmental cost recovery clause. 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>3</sup> The Commission has jurisdiction over this matter pursuant to Section 366.8255, F.S.

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<sup>2</sup>40 C.F.R. Parts 257 and 261 (2015).

<sup>3</sup>Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company*.

## Discussion of Issues

**Issue 1:** Should the Commission approve Tampa Electric Company's petition for approval of the second phase of its proposed CCR Compliance Program for cost recovery through the Environmental Cost Recovery Clause?

**Recommendation:** Yes. Staff recommends that the Commission approve TECO's second phase of its proposed CCR Compliance Program to comply with the EPA's CCR Rule. The Economizer Ash Closure Project is a compliance activity associated with the Company's previously approved CCR Compliance Program. Staff recommends that the operations and maintenance (O&M) costs associated with this project be allocated to rate classes on an energy basis and capital costs to complete this project should be allocated to appropriate rate classes on a demand basis. (Mtenga, Wu)

**Staff Analysis:** The EPA's final CCR Rule sets forth the minimum criteria for the safe disposal of CCR in landfills and surface impoundments at sites where electric utilities use the combustion of coal as an energy source to fuel steam generating units, such as TECO's Big Bend Station. The CCR Rule applies to new and existing active landfills and surface impoundments that are used by electric utilities for the purpose of solid waste management of CCR, including CCR units located off the site of the power plant and certain inactive CCR impoundments. Inactive impoundments are those that no longer receive CCR on or after the October 19, 2015, effective date of the final CCR Rule.

The second phase of TECO's CCR Compliance Program and the Economizer Ash Closure Project is substantially similar to the compliance plans filed by TECO in Docket No. 20150223-EI. It is also similar to plans for compliance with the CCR Rule approved for Florida Power & Light Company, Duke Energy Florida, LLC and Gulf Power Company in previous ECRC proceedings.<sup>4</sup> At 40 C.F.R. Part 257.60(a), the CCR rule requires a five-foot separation between the base of any CCR impoundment and the uppermost aquifer. Water level data that was collected during the first phase of the CCR Compliance Program indicate the bottom of the EAPP is significantly less than five feet from the uppermost aquifer. After evaluation of allowable alternatives, TECO decided to perform closure through removal because the project was the most cost effective alternative that satisfied the rule requirements.<sup>5</sup> TECO has proposed the closure of the EAPP by October 19, 2021, with the O&M expenditures for the project beginning in the fourth quarter of 2017.<sup>6</sup> The work to be completed includes dewatering and excavation of the site, CCR transport and disposal, site restoration, engineering, and post closure groundwater monitoring. The estimated cost for the closure project is approximately \$30 million, as shown below in Table 1-1.

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<sup>4</sup>Docket No. 20150007-EI, Environmental Cost Recovery Clause, Hearing EXH 29, EXH 34, EXH 42.

<sup>5</sup>TECO's response to Staff's First Data Request No. 15.

<sup>6</sup>TECO's response to Staff's First Data Request No. 1.

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

Description of Work	Capital (\$)	O&M (\$)	Total (\$)
Dewatering & Excavation	-	2,714,800	2,714,800
CCR Transport & Disposal	-	25,752,000	25,752,000
Engineering	400,000	-	400,000
Site Restoration	1,009,000	-	1,009,000
Post Closure Groundwater Demonstration/Monitoring	-	116,400	116,400
Total	1,409,000	28,583,200	29,992,200

Source: TECO's petition

The costs shown in Table 1-1 above were developed by TECO based on previous experience with similar work performed at the Big Bend Station, discussions with professionals knowledgeable in these areas, and guidance obtained from the CCR Rule. These costs are consistent with costs approved in the TECO CCR Project in Docket No. 20150223-EI. TECO provided details on the projects and the development of estimated costs in its responses to Staff's First Data Request. Table 1-2 below shows the estimated impact of this project on residential customer monthly bills.

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

Year	Monthly Impact(\$)
2018	0.41
2019	0.61
2020	0.43
2021	0.02
2022	0.01

Source: TECO's responses to Staff's First Data Request No. 11

Based on the petition and TECO's responses to Staff's First Data Request, staff recommends that TECO's second phase of its CCR Compliance Program is necessary for compliance with the EPA's CCR Rule. The 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.

Based on staff's analysis of the docket material, the activities proposed in TECO's petition meet these criteria. Based on the information in the docket file and the CCR Rule, staff recommends these activities are essential projects that would not be necessary but for TECO's obligation to comply with government imposed environmental regulation. The need for these compliance activities was triggered after TECO's last test year upon which rates are currently based. Finally, the costs of the proposed compliance activities are not currently being recovered through some other cost recovery mechanism or through base rates. Staff notes that the reasonableness and prudence of individual expenditures related to the second phase of TECO's CCR Compliance Program will continue to be subject to the Commission's review in future ECRC proceedings.

### **Conclusion**

Staff recommends that the Commission approve TECO's second phase of its proposed CCR Compliance Program to comply with the CCR Rule. The Economizer Ash Closure Project is a compliance activity associated with the Company's previously approved CCR Compliance Program. Staff recommends that the O&M cost associated with this project be allocated to rate classes on an energy basis and capital costs to complete this project be allocated to appropriate rate classes on a demand basis.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (Cuello)

**Staff Analysis:** If no timely protest to the proposed agency action is filed within 21 days, this docket should be closed upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the proposed agency action.