

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Seminole) DOCKET NO. 880309-EC
 Electric Cooperative, Inc., TECO Power)
 Services Corporation and Tampa Electric) ORDER NO. 21903
 Company for a determination of need for)
 proposed electrical power plant.) ISSUED: 9-18-89
)

Pursuant to Notice, a Prehearing Conference was held on August 25, 1989, in Tallahassee, Florida, before Commissioner Gerald L. Gunter, Prehearing Officer.

APPEARANCES:

RICHARD MELSON and CHERYL G. STUART, Esquires, Hopping, Boyd, Green and Sams, P. O. Box 6526, Tallahassee, Florida 32314
On behalf of Seminole Electric Cooperative, Inc. (SEC).

JAMES D. BEASLEY, LEE L. WILLIS and JOHN P. FONS, Esquires, Ausley, McMullen, McGehee, Carothers and Proctor, P. O. Box 391, Tallahassee, Florida 32302
On behalf of Tampa Electric Company (TECO) and TECO Power Services (TPS).

SUZANNE BROWNLESS, Esquire, Florida Public Service Commission, Division of Legal Services, 101 East Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff (Staff).

PRENTICE PRUITT, Esquire, Florida Public Service Commission, General Counsel, 101 East Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

PREHEARING ORDER

Background

On February 23, 1988, SEC filed a petition to determine its need for two 220 MW class combined cycle generating units with an in-service date of January 1, 1993. As part of its evaluation of the most cost-effective means of supplying its capacity needs in 1993, SEC issued a request for proposals

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(RFP) for capacity from qualifying facilities and independent power producers. At the hearings in this docket in December, 1988, SEC indicated that it had compiled a "short list" of two bidders who, with further negotiation of terms, might provide a more economical means of supplying SEC with its needed capacity than construction of its proposed units. Based on that representation, we bifurcated this docket and agreed that two sets of findings would be made: an initial order dealing with the need of SEC for 450 MW of capacity in 1993 and a second order, the final order in the docket, dealing with the most economical means of satisfying that need if one were found to exist. It is our intention that these two orders taken together satisfy the reporting requirements of Section 403.507(b), Florida Statutes. Order No. 20930, issued on March 23, 1989, at 1-2.

In Order No. 20930 we found that SEC had established a need for 450 MW of capacity in 1993. In this hearing the central issue is the most economic means of satisfying that need: the two 220 MW combined cycle units which SEC has proposed to build on its Polk/Hardee County site or the combination of purchased power and construction on the Polk/Hardee site proposed by TPS in its response to SEC's RFP.

On July 31, 1989, SEC filed a supplement to need determination petition and joint motion to add TECO and TPS as co-applicants. The testimony of John Ramil (TECO), Richard E. Ludwig (TPS), Timothy S. Woodbury (SEC), David L. Beam (SEC), and Richard Midulla (SEC) was also filed on July 31. Prehearing Statements were filed by Staff, SEC, TECO and TPS on August 14, 1989. The continuation of this hearing is currently scheduled for September 20, 1989.

Use of of Prefiled Testimony

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and exhibits, unless there is a sustainable objection. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his testimony at the time he or she takes the stand.

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Use of Depositions and Interrogatories

If any party desires to use any portion of a deposition or an interrogatory, at the time the party seeks to introduce that deposition or a portion thereof, the request will be subject to proper objections and the appropriate evidentiary rules will govern. The parties will be free to utilize any exhibits requested at the time of the depositions subject to the same conditions.

Order of Witnesses

| <u>Witness</u> | <u>Subject Matter</u> | <u>Issues</u> |
|---------------------------------|---|---------------|
| 1. Richard Midulla (SEC) | Overview of SEC's supplemented need determination petition. | 2, 4, 5, 16 |
| 2. Timothy Woodbury (SEC) | Results of SEC's competitive bidding program and details of agreement with TPS. | 7, 16 |
| 3. David L. Beam (SEC) | Economic and reliability analysis of TPS project. | 1-6, 16 |
| 4. Girard F. Anderson (TECO) | Corporate rationale for selection of TPS. | 10, 16 |
| 5. Alan D. Oak (TECO Energy) | Role of TPS. | 10, 16 |
| 6. J.B. Ramil (TECO) | Benefits of TPS roject to TECO's ratepayers. | 1-7, 10-16 |
| 7. R.E. Ludwig (TPS) | TPS's role in SEC's project. | 8, 11, 16 |
| 8. Theresa Walsh (Staff) | Regulatory overview. | 1-15 |

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EXHIBIT LIST

(*) Will be numbered sequentially at hearing.

| <u>Exhibit Number*</u> | <u>Witness</u> | <u>Description</u> |
|------------------------|----------------|---|
| | Midulla | (RM-2) - Difference in rate to members (combined cycle vs. TPS project) |
| | Woodbury | (TSW-3) - Summary of principal terms-agreement for sale and purchase of capacity and energy |
| | Woodbury | Ground lease agreement between Acuera Corporation and TECO Power Services (TPS) |
| | Woodbury | Agreement for sale and purchase of capacity and energy between TPS and SEC |
| | Beam | (DLB-9) - Results of economic analysis (combined cycle vs. TPS project) |
| | Beam | (DLB-10) - Comparison of 20 year cumulative PWRR (combined cycle vs. TPS project) |
| | Beam | (DLB-11) - Comparison of 30 year cumulative PWRR (combined cycle vs. TPS project) |

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EXHIBIT LIST

| <u>Exhibit Number</u> | <u>Witness</u> | <u>Description</u> |
|-----------------------|----------------|---|
| | Ramil | (JBR-1) - Summary of principal terms of TPS/ TECO agreement |
| | Ramil | Agreement for sale and purchase of capacity and energy from Big Bend Station Unit No. 4 from TECO to TPS |
| | Ramil | Agreement for sale and purchase of capacity and energy from Hardee Power Station between TPS and TECO dated July 27, 1989 |
| | Ludwig | (REL-1) - Comparison of TPS and SEC projects |
| | Walsh | (TGW-1) - Letter of August 9, 1989, to Chairman Reeder, SEC |
| | Walsh | (TGW-2) - NARUC Resolution adopted July 27, 1989 |

PARTIES' STATEMENT OF BASIC POSITION

STAFF: Staff is in basic agreement with the "sharing" concept of this project. Pending further discovery, however, Staff is unable to determine whether TPS is the correct party to execute this plan.

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SEC: By Order No. 20930, the Commission determined that SEC had established a need for 450 MW of capacity in 1993 and that, with the exception of any alternative which might result from Seminole's ongoing RFP process, that need would be best served by construction of two 220 MW class combined cycle units at its Polk/Hardee County Site (the Seminole combined cycle project).

SEC has subsequently achieved a successful conclusion to its RFP effort and has entered into a 20-year contract with TPS under which TPS will provide the capacity required to meet SEC's reserve capacity needs (Power Services Project). The capacity to be provided by the Power Services Project will come from a combination of combined cycle and combustion turbine facilities to be constructed by TPS at SEC's Polk/Hardee County site (Hardee Power Station) and, for the first ten years, a purchase of capacity from the Big Bend 4 coal unit.

The Power Services Project is a viable and cost-effective means of meeting SEC's need for reserve capacity and represents a PWRR savings to SEC of \$57 million compared to the original Seminole combined cycle project. The Commission should therefore determine a need for the facilities comprising the Hardee Power Station (i.e., 295 MW of capacity in 1993 and an additional 145 MW of capacity in 2003), and the associated transmission lines and fuel delivery facilities.

TECO: In addition to the benefits which this project will provide to the consumers of SEC, significant benefits will flow to TECO's customers. Net benefits to TECO's customers over the 20 year life of the project are expected to be approximately \$90 million in 1989 dollars. This arrangement is the best alternative for TECO to satisfy its peaking requirements.

TPS: TPS is ready, willing and able to implement this project. Its role will enable SEC and TECO to realize significant savings on capacity and energy over the 20 year life of the project. At the same time, TECO and SEC will enjoy insulation from risk associated with the financing, construction, operation and maintenance

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of generating plant and associated facilities and will be able to avoid the capital investment which would otherwise be necessary if either or both of these utilities constructed the project.

STATEMENT OF ISSUES AND POSITIONS

Factual

ISSUE 1: (7) Would the proposed units provide for electric system reliability and integrity to Peninsular Florida?

STAFF: Yes. (Walsh)

SEC: (Note: In Seminole's responses to the issues in the first prehearing order, the "proposed units" referred to the two 220 WM class combined cycle units comprising the Seminole Combined Cycle Project. Given the successful outcome of Seminole's RFP efforts, the "proposed units" now refer to the combined cycle and combustion turbine units proposed to be built by Power Services that will comprise the Hardee Power Station.)

Yes. The Power Services Project, including the Hardee Power Station and the interim purchase of a capacity entitlement from the Big Bend 4 Unit, will meet Seminole's reliability need for approximately 450 MW of reserve capacity in 1993. The Project's construction of 295 MW of combined cycle and combustion turbine capacity by 1993 will also contribute to Tampa Electric's need for peaking capacity and to the overall Peninsular Florida reliability need for approximately 1250 MW of capacity by 1993. The Project's construction of an additional 145 MW of capacity by 2003 will further contribute to Peninsular Florida's reliability needs. As indicated by testimony at the hearings last December, the proposed transmission configuration will assist in maintaining the integrity of the electric grid. (Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

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ISSUE 2: (8) Would the proposed units provide adequate electricity to Seminole at a reasonable cost?

STAFF: No position at this time.

SEC: Yes. The Power Services Project will provide adequate electricity to meet Seminole's reliability criterion at the most reasonable cost of any alternative available. The Power Services Project has the lowest present worth of revenue requirements (PWRR) over the study horizon and over the 30-year life cycle of the plant of any alternative. The Project represents a 20-year PWRR savings of \$57 million compared to the original Seminole Combined Cycle Project. The Power Services Project also has the least rate impact to Seminole's member-consumers of any alternative. (Midulla, Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 3: (9) Would the proposed units provide adequate electricity to Peninsular Florida at a reasonable cost?

STAFF: No position at this time.

SEC: Yes. The proposed units will provide needed additional generating capacity to Peninsular Florida at a reasonable cost. (Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 4: (14) Are the units proposed by Seminole the appropriate generating alternatives to supply capacity to Seminole given the uncertainties of future load growth, fuel prices, technological developments and economic conditions?

STAFF: No position at this time.

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SEC: Yes. The Power Services Project is the best generating alternative to meet Seminole's reserve capacity need. This Project (i) has the lowest present worth of revenue requirements (PWRR) of any alternative available, (ii) has the least rate impact to Seminole's member-consumers of any alternative available, and (iii) has many of the same strategic benefits as the original Seminole Combined Cycle Project. (Midulla, Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 5: (18) Would the proposed units be the most cost-effective alternative available to Seminole?

STAFF: No position at this time.

SEC: Yes. The Power Services Project has a present worth of revenue requirements that is substantially less than any of the available alternatives. In particular, it has a 20-year PWRR that is \$57 million less than the Seminole Combined Cycle Project that Order No. 20930 established as the "bench-mark against which all RFP bids are measured." (Midulla, Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 6: (19) Would the proposed units be the most cost-effective alternative to Peninsular Florida?

STAFF: No position at this time.

SEC: Yes. The FCG's Long Range Planning Study for the 1989 Planning Hearings shows that a mix of combined cycle and combustion turbine units is the most cost effective alternative for meeting Peninsular Florida's capacity needs in the 1992 to 1993 time frame. The Power Services Project, which includes one 220 MW combined cycle unit and one 75 MW combustion turbine unit in 1993, is fully consistent with the statewide need for both types of units

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in that year. The future conversion of the 75 MW combustion turbine to a 220 MW combined cycle unit is also consistent with the general trend of the FCG studies, which show that combined cycle units are viable generating units through the end of the FCG's study period. (Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 7: (23) What transmission facilities are required to tie the proposed plant into the electric grid?

STAFF: TECO will construct a transmission line from the Hardee Power Station to its Pebbledale Substation. SEC will construct the remaining two lines: one to FPC's Vandolah Substation and one to Lee County Electric Cooperative's Lee Substation.

SEC: The transmission configuration for the Power Services Project is the same as for the original Seminole Combined Cycle Project. Three transmission lines extending from the Hardee Power Station to (i) FPC's Vandolah Substation, (ii) TECO's Pebbledale Substation, and (iii) Lee County Electric Cooperative's Lee Substation will be required to tie the proposed plant into the electric grid. As indicated by testimony at the hearings last December, these transmission interconnections will reduce the state's transmission losses and will provide additional reliability in several areas of central Florida. (Woodbury)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 8: (24) What natural gas pipeline facilities are required to provide fuel to the plant site?

STAFF: Agrees with SEC.

SEC: A natural gas lateral approximately 47 miles in length will be required to tie the plant site into the FGT gas transmission system.

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TECO: Agrees with SEC.

TPS: Agrees with SEC.

ISSUE 9: (NEW) What other fuel delivery facilities could be used to provide fuel to the plant site?

STAFF: Agrees with TPS.

SEC: Agrees with TPS.

TECO: Agrees with TPS.

TPS: Other fuel supply facilities include a liquid petroleum pipeline from Port Manatee to the Hardee Power Station as well as truck and rail deliveries. (Ludwig)

ISSUE 10: (NEW) TECO has entered into a power sales agreement under which it will purchase certain capacity and energy from TPS during the period 2003-2012. Does this agreement represent the best overall means for TECO to satisfy its peaking requirements?

STAFF: No position at this time.

SEC: Agrees with TECO.

TECO: TECO has analyzed other alternatives and has determined that this arrangement is the best available alternative. TECO estimates that the net savings to its customers alone under this agreement will be \$90 million in 1989 dollars. (Ramil)

TPS: Agrees with TECO.

ISSUE 11: Have adequate assurances been provided regarding available fuel to service TPS's needs at a reasonable cost?

STAFF: Yes.

SEC: Agrees with TPS.

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TECO: Yes.

TPS: Yes.

Legal Issues

ISSUE 12: What is the legal status under federal and state law of TPS' proposed project?

STAFF: The structure of TPS is such that it does not currently fall within FERC's proposed definition of an independent power producer (IPP) but does comport with the definition of exempt wholesale generator (EWG) as defined in pending U.S. Senate legislation on PUHCA Reform. This project is not a "public utility" under Section 366.02(1), Florida Statutes. (Walsh)

SEC: Agrees with TPS.

TECO: Agrees with TPS.

TPS: It is expected that the TPS project will be determined to constitute interstate transmission of electrical power for purposes of the Federal Power Act (16 USC §824, et eq.), and that TPS will be subject to regulation by the Federal Energy Regulatory Commission ("FERC").

With respect to state law, TPS is a subsidiary of TECO Energy, Inc., and is a Florida corporation. Because its business is the supply of electric power on a wholesale basis to utilities, TPS will not be engaged in the retail sale of electricity. It is not a "public utility" as that term is defined by Section 366.02(1), Florida Statutes.

ISSUE 13: What is the jurisdiction of the FPSC over TPS' proposed project?

STAFF: As stated above, FPSC will have no direct regulatory authority over TPS.

SEC: Agrees with TPS.

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TECO: Agrees with TPS.

TPS: Although TPS is not a "public utility" as that term is defined by Section 366.02(1), Florida Statutes, the FPSC will, nonetheless, retain oversight over the core of TPS' business pursuant to the "Florida Electrical Power Plant Siting Act," Section 403.501, et seq., Florida Statutes. Since TPS is involved in a project requiring an affirmative determination of need with respect to the construction of an electrical power plant, or an electrical power plant alteration or addition, the FPSC will play a significant role. As evidenced by the instant proceeding, the FPSC, in connection with its determination of need, has ample opportunity now to assure itself of the prudence of the TPS proposed project from the ratepayers' standpoint. Additionally, since TPS is an affiliate of Tampa Electric, which is a regulated utility under Florida Statutes, the FPSC may require certain reporting of TPS as part of its oversight of Tampa Electric Company.

ISSUE 14: What is the jurisdiction of FERC over TPS' proposed project?

STAFF: It is uncertain at this time whether the TPS project will be under the jurisdiction of the FERC. All wholesale sales of electricity are subject to FERC approval. However, under certain circumstances, FERC has proposed to exempt wholesalers from ongoing review. TPS could be granted such an exemption.

SEC: Agrees with TPS.

TECO: Agrees with TPS.

TPS: It is expected that the TPS project will be determined to constitute interstate transmission of electrical power for purposes of the Federal Power Act (16 USC §824, et eq.), and that TPS will be subject to regulation by the Federal Energy Regulatory Commission ("FERC").

With respect to state law, TPS is a subsidiary of TECO Energy, Inc., and is a Florida corporation. Because its business is the supply of electric power on a wholesale

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basis to utilities, TPS will not be engaged in the retail sale of electricity. It is not a "public utility" as that term is defined by Section 366.02(1), Florida Statutes.

In addition, in the likely event it is determined TPS' proposed project is subject to federal regulation, pursuant to the Federal Power Act (16 USC §824, et seq.), TPS will file for approval of its rates by FERC. Should that be the case, then there will be another opportunity at FERC to test the justness and reasonableness of the proposed rates.

ISSUE 15: What is the impact on TECO Energy of TPS?

STAFF: TECO Energy is exempt from the provisions of 15 USC §79 et seq., Public Utility Holding Company Act of 1935 (PUHCA), by operation of 17 CFR §250.2(a)(1). 17 CFR §250.2(1)(1) requires that the public utility be "predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company are organized."

Although, TPS would be predominantly intrastate in character, TECO Energy could also lose its exemption if it acquires 10% of the "voting securities" of an electric utility company. TPS is an electric utility company under PUHCA. Thus, at this time it is unclear whether TECO Energy will lose its exemption from PUHCA and come under SEC regulation.

SEC: Yes.

TECO: TECO Energy does not believe that there will be any adverse impact on it from the acquisition of TPS.

Based upon existing SEC precedent, and in light of TPS' intention to confine its sale of electricity to Florida entities, TECO Energy's formation of TPS should not jeopardize TECO Energy's intrastate exemption under the provisions of the Public Utility Company Holding Act of 1935 ("PUCHA"), 15 USC §79, et seq. See Sierra Pacific Resources, Memorandum, Opinion and Order, dated January 28, 1988. TECO Energy will seek SEC approval under

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Sections 9 and 10 of PUCHA (15 USC §79i and 79j). Based upon the above case, other SEC precedent, and the integrated nature of the transaction, TECO Energy believes that SEC approval will be obtained.

TPS: Agrees with TECO.

ISSUE 16: (29) Based on the resolution of the above factual and legal issues, should the joint petition for determination of need be granted?

STAFF: No position at this time.

SEC: Yes. Seminole urges approval of the Power Services Project as the best way to meet its capacity need. In the event that Commission disagrees, then Seminole requests that the Commission make a determination of need for the Seminole Combined Cycle Project and its associated facilities as originally proposed in this docket. (Midulla, Woodbury, Beam)

TECO: Agrees with SEC.

TPS: Agrees with SEC.

MOTIONS

On July 31, 1989, SEC filed a supplement to need determination petition and joint motion to add as co-applicants TECO and TPS. TPS is a wholly-owned subsidiary of TECO Energy, Inc., the parent company of TECO. Thus, TECO and TPS are sister subsidiaries. TECO and TPS are part of the RFP proposal which SEC has determined to be more cost-effective than its construction of two 220 MW class combined cycle units. SEC has amended its petition to request that this RFP proposal be certified by the Commission as the most cost-effective means of meeting its reserve capacity needs. As such, TECO and TPS are necessary parties to this need determination. For that reason we grant SEC's request that TECO and TPS be added as co-applicants on this docket. We also grant the request of SEC that the docket title be amended to read: In re: Joint petition of Seminole Electric Cooperative, Inc., TECO Power Services Corporation and Tampa Electric Company for a determination of need for proposed electrical power plant.

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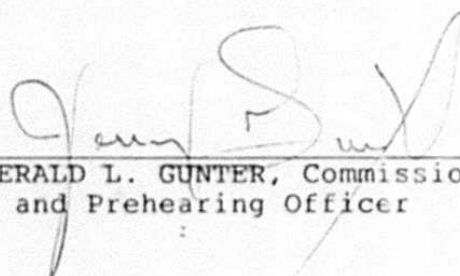
REQUIREMENTS

All applicable procedural orders and rules have been complied with.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that these proceedings shall be governed by this order unless modified by the Commission.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 18th day of SEPTEMBER, 1989.



GERALD L. GUNTER, Commissioner
and Prehearing Officer

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