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ORIG

July 30, 1998

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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REGISTRATION  
DIVISION

Re: Petition by Tampa Electric Company for Approval of Cost Recovery for a new Environmental Program, the Big Bend Units 1 and 2 Flue Gas Desulfurization System, FPSC Docket No. 980693-E1

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Memorandum in Opposition to the Florida Industrial Power Users Group's Motion to Dismiss.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter

Sincerely,

James D. Beasley

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JDB/pp  
Enclosures

cc All Parties of Record (w/enc)

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DOCUMENT ID: 08036 DATE:

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REGISTRATION DIVISION

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric )  
Company for Approval of Cost Recovery )  
for a new Environmental Program, the )  
Big Bend Units 1 and 2 Flue Gas )  
Desulfurization System. )  
\_\_\_\_\_ )

DOCKET NO. 980693-EI  
FILED: July 30, 1998

**TAMPA ELECTRIC COMPANY'S  
MEMORANDUM IN OPPOSITION TO THE  
FLORIDA INDUSTRIAL POWER USERS GROUP'S MOTION TO DISMISS**

Pursuant to Fla. Admin. Code Rule 25-22-037, Tampa Electric submits this its Memorandum in Opposition to the Florida Industrial Power Users Group's ("FIPUG") Motion to Dismiss. As grounds therefor, Tampa Electric states:

1. FIPUG's Motion to Dismiss appears to be predicated on a misinterpretation of provisions of Chapter 366, Florida Statutes, and a misunderstanding of the relief requested by Tampa Electric in this proceeding.

2. First FIPUG contends, albeit incorrectly, that the petition is premature because the petition asks for cost recovery, not prudence approval, and the proposed FGD system is not "presently in used and useful service."

3. Tampa Electric's petition clearly states that "in view of the magnitude of the proposed investment in the project and the level of O & M expenses associated with it, Tampa Electric is presently requesting a Commission determination that the project is a reasonable compliance option; that it is a project which qualifies for environmental cost recovery; and that funds prudently

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FLORIDA PUBLIC SERVICE COMMISSION

invested and expended in implementing the project will be recoverable through the ECRC mechanism."

4. Tampa Electric's petition goes on to explain that the company only proposes to begin collecting the actual and projected costs of the project during the cost recovery period when the FGD system is placed in service. The company proposed in its petition that the project costs be tracked and accumulated in AFUDC until the FGD system goes in service. The petition was careful to indicate that prior to seeking the actual recovery of costs associated with this project, Tampa Electric will file additional testimony and exhibits for consideration at the hearing in which the ECRC factors will be set for the cost recovery period when the FGD system will be placed in service. FIPUG's "used and useful" argument is inapposite.

5. FIPUG also erroneously contends that Tampa Electric failed to seek preconstruction prudence approval "as required by §366.825, Florida Statutes, before seeking cost recovery under §366.8255(2); . . . ." Since prudence approval is not required pursuant to Section 366.825, Florida Statutes, the Commission is free to consider both prudence and cost in a proceeding under Section 366.8255. Tampa Electric has merely requested that the proceeding pursuant to Section 366.8255 be bifurcated to cover prudence in a first phase and cost recovery in a second phase. The text of Tampa Electric's pleading gives clear and unambiguous notice of its proposed procedural approach.

6. Section 366.8255, Florida Statutes, governing

environmental cost recovery, does not say that utilities may only seek recovery of costs of an approved plan. Indeed, the cost recovery statute is broader and permits utilities to seek recovery of any environmental costs, not just Clean Air Act related costs. The Commission, in implementing Section 366.8255, Florida Statutes, has approved environmental compliance projects, both from a prudence and cost perspective, not contained in a preapproved compliance plan. In essence, FIPUG is attempting to block a legitimate petition for relief under Section 366.8255, Florida Statutes, simply because Tampa Electric did not avail itself of the option to request Commission approval of an overall compliance plan under Section 366.825, Florida Statutes. Tampa Electric urges rejection of that effort.

7. FIPUG next contends that Sections 366.825 and 366.8255, Florida Statutes, contemplate a finding that base rates are insufficient to cover environmental costs before a utility may request recovery under the Environmental Cost Recovery Clause. This is simply erroneous and contrary to the statutes and prior Commission precedent. The Commission's policy regarding the qualification for environmental cost recovery is summarized on pages 6 and 7 of the Commission's order issued in 1994 in a Gulf Power Company ECRC request.<sup>1</sup> There the Commission stated:

We find that the following policy is the most appropriate way to implement the intent of the environmental cost recovery statute:

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<sup>1</sup>Order No. PSC-94-0044-POF-EI issued January 12, 1994 in Docket No. 930613-EI.

Upon petition, we shall allow the recovery of costs associated with an environmental compliance activity through the environmental cost recovery factor if:

1. such costs were prudently incurred after April 13, 1993;
2. the activity is legally required to comply with a 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,
3. such costs are not recovered through some other recovery mechanism or through base rates.

Compliance with each of these criteria is alleged in Tampa Electric's petition. Nowhere in the statutes relied on by FIPUG does there appear a requirement that the Commission find that base rates are insufficient to cover environmental costs before the ECRC mechanism is appropriate. Instead, the standard is that environmental compliance cost recovery is inappropriate for environmental compliance activities which are already being recovered through base rates or some other cost recovery mechanism.<sup>2</sup> Tampa Electric's petition specifically alleges, at pages 4-5, that the expenses associated with the company's proposed FGD system are not being recovered through base rates nor through any other recovery mechanism.

8. The Commission should also reject FIPUG's suggestion that it is necessary to speculate on what Tampa Electric's financial standing will be in January of 2001. A similar effort to condition ECRC recovery upon the question of whether a utility is earning a

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<sup>2</sup>Order No. PSC-94-0044-FOF-EI, issued in the Gulf Power decision on January 12, 1994, at page 2.

fair rate of return was rejected in the Gulf Power decision.<sup>3</sup>

There the Commission stated:

Accordingly, we find that if the utility is currently earning a fair rate of return that it should be able to recover, upon petition, prudently incurred environmental compliance costs through the ECRC if such costs were incurred after the effective date of the environmental compliance cost legislation and if such costs are not being recovered through any other cost recovery mechanism.

Again, Tampa Electric has made clear allegations to this effect in its petition.

9. Tampa Electric has proceeded in a deliberate and cost conscious manner attempting to select the best and most cost-effective Phase II compliance strategy for the benefit of its customers. FIPUG's flawed argument under about whether this effort has been petitioned for the appropriate statute and whether it is "too late" to convert the company's petition into one that falls within a different optional request under a different statute is, at best, confusing and artificially narrow.

WHEREFORE, Tampa Electric Company respectfully requests the Commission deny FIPUG's Motion to Dismiss.

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<sup>3</sup>Order No. PSC-94-0044-FOF-EI, at pages 3-5.

DATED this 30<sup>th</sup> day of July, 1998.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 30<sup>th</sup> day of June, 1998 to the following:

Ms. Grace Jaye\*  
Staff Counsel  
Division of Legal Services  
Florida Public Service  
Commission  
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