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September 9, 2003

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Environmental Cost Recovery Clause
FPSC Docket No. 030007-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and seven copies of Tampa Electric Company's response to the Florida Public Service Commission's Environmental Cost Recovery Audit for the Twelve Months Ended December 31, 2002, Control No. 03-030-2-1.

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

JDB/pp
Enclosure

cc: Jim Breman (w/enc.)

Tampa Electric Company Response
To
Environmental Cost Recovery Audit
Twelve Months Ended December 31, 2002
Docket No. 030007-EI
Audit Control Number 03-030-2-1

This document contains Tampa Electric Company's response to the Environmental Cost Recovery Clause audit of the twelve months ending December 31, 2002. The company's response includes: 1) a clarifying comment on the Summary of Significant Findings, and 2) the company's position and resolution, where necessary, on the audit disclosures.

Summary of Significant Findings
Concerning Tampa Electric's Big Bend Unit 3 FGD Optimization and Utilization project, the auditor indicates $390,468 was inappropriately included in the plant-in-service amount because the expenditure occurred prior to Commission approval of the project. Tampa Electric disagrees with the finding and addresses the issue more fully in response to Audit Disclosure No 3.

Concerning the Gannon projects, the statement reads, "The Gannon projects were understated by inaccurately calculating return on investment on the remaining balances net of depreciation instead of by the original amount." To more accurately state the finding, it should read, "The Gannon projects' **return on investment was** understated by inaccurately calculating return on investment on the remaining balances net of depreciation instead of by the original amount." Tampa Electric agrees with the finding and will make the adjustment in the 2003 ECRC True-up filing.

Audit Disclosure No. 1

Tampa Electric agrees with this disclosure and, as stated, the correction has already been posted in May 2003.

Audit Disclosure No. 2

Tampa Electric agrees with this disclosure and, as stated, the correction has already been posted in June 2003.

Audit Disclosure No. 3

This disclosure has three distinct issues:

1. An over-statement of 2002 plant-in-service for the Big Bend Unit 3 FGD Optimization and Utilization project of $150,088.

2. An over-statement of plant-in-service for the Big Bend Unit 3 FGD Optimization and Utilization project of $390,468 due to these expenditures occurring prior to Commission approval.
3. An under-statement of 2002 ROI on the four Gannon projects of $29,617.

Tampa Electric agrees with Issue No. 1 and Issue No. 3 and adjustments were made in June 2003.

Concerning Issue No. 2, the auditor assumed any project expenditures prior to Commission approval of the project would not be recoverable. Tampa Electric initially agreed with the auditor and made an adjustment in June 2003. However, upon reviewing the ruling rendered in the docket approving the project, the Commission allowed recovery of all capital expenditures that occurred on the project prior to the date of approval. In Docket No. 000685-EI, Order No. PSC-00-1906-PAA-EI, issued October 18, 2000, the Commission stated, "Therefore, TECO was subjected to extraordinary circumstances and can recover the costs it occurred before it was able to file the petition." This language clearly allowed Tampa Electric to recover all capital costs it incurred prior to Commission approval. Attached to this response is a copy of the section of the order approving the Big Bend Unit 3 FGD Optimization and Utilization project that contains the authorizing language quoted above. To rectify the inadvertent oversight, Tampa Electric corrected the erroneous adjustment in August 2003.

Audit Disclosure No. 4

Tampa Electric agrees with this disclosure. No action is necessary.

basis because the program is a Clean Air Act compliance activity. The Commission determined in 1994, that costs for Clean Act Compliance Activities should be allocated to rate classes on an energy basis. This has been Commission practice since the guidelines were established in Order No. PSC-94-0393-FOF-EI, issued April 6, 1994. Program implementation issues, such as this one, are typically addressed in the ongoing ECRC proceedings and are not necessary to resolve at this time.

F. Conclusions

Based on the forgoing review of TECO's FGD Plan and application of the Commission's ECRC criteria to TECO's FGD Plan, we find that the FGD Plan meets the requirements of Order No. PSC-94-0044-FOF-EI.

III. Costs Incurred Before the Petition was Filed

Section 366.8255(2), Florida Statutes, provides:

> An electric utility may submit to the Commission a petition describing the utilities proposed environmental compliance activities and projected environmental costs....

In Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in Docket No. 940042-EI, we stated, °environmental compliance cost recovery, like recovery through other cost recovery clauses, should be prospective.± However, in that Order we recognized that there might be exceptions to the prospective costs requirement in °extraordinary circumstances.± We further stated that whether extraordinary circumstances existed would be determined case-by-case, based on the facts of each case. The key to determining extraordinary circumstances is ±whether the utility could reasonably have anticipated the changes [in environmental regulations] and the costs.± Examples of extraordinary circumstances provided in the Order were rapidly changing laws, imposition of unanticipated costs, and environmental emergencies.

Through interrogatories, our staff brought the question of incurred costs to TECO's attention. TECO explained that it had to implement parts of the Consent Decree immediately, due to time schedules in the Consent Decree and the previously scheduled outage of Big Bend Unit 3. The unit had to be altered to meet the requirements of the Consent Decree and the most efficient time to do it was during a planned outage. The Consent Decree was signed in February and the outage had been scheduled to begin in March 2000. If TECO had not acted immediately, it would have had to schedule another outage.

TECO also explained that it wanted to avoid recovering costs associated with FGD optimization and utilization in a piecemeal fashion and so it chose to request recovery of the FGD activities °under one program.± TECO further explained that the outage not only provided an opportunity to perform the required work, but also afforded the best means to compile an estimate of the initial scope and costs for compliance with the FGD Plan.

Upon consideration, we find that extraordinary circumstances led to TECO's incurring costs before a petition could be filed. TECO's settlement negotiations were not finalized until February 2000 and TECO had to start incurring costs in March 2000 in order to take advantage of a planned shut-down. Given that TECO was involved in negotiations nearly until the time it had to act, we find that TECO could not have reasonably anticipated the environmental requirements it had to meet. Therefore, TECO was subjected to extraordinary circumstances and can recover the costs it incurred before it was able to file the petition.

From a policy perspective, we believe that to deny recovery of the incurred costs creates a disincentive for utilities to be vigorous negotiators. If we were to deny recovery of the costs incurred under TECO's circumstances, we would be sending a message to utilities to acquiesce in negotiations just so the issues can be resolved in time to file a petition before incurring costs. Under such a scenario, utilities might incur greater costs than necessary, to the ultimate detriment of the ratepayers.

We temper our decision by noting that TECO did have some indication of the outcome of the negotiations. It signed the CFJ with FDEP in December 1999 and the EPA Consent Decree largely mirrors FDEP's CFJ. We recognize, however, that TECO could not have known the outcome of the negotiations with the EPA with certainty. Under these particular circumstances, the determination of whether TECO could have anticipated the incurred cost is a difficult one. For this reason we note that this case represents the outer limit of extraordinary circumstances.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Petition for Cost Recovery through the Environmental Cost Recovery Clause is granted. 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