

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request of Tampa Electric Company)
to exclude Outage Events on April 11 and)
12 and June 13, 24 and 26, 2004 from its)
Annual Distribution Service Reliability)
Report.)
_____)

DOCKET NO. 041375-E1
FILED: December 7, 2004

**TAMPA ELECTRIC COMPANY'S PETITION FOR WAIVER
OF THE 30-DAY FILING REQUIREMENT IN RULE 25-6.0455(3)**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code ("F.A.C."), hereby petitions the Florida Public Service Commission ("the Commission") for a one-time temporary waiver of the provision in Rule 25-6.0455(3), F.A.C., that a request by a utility to exclude an Outage Event from its Annual Distribution Service Reliability Report must be filed "within 30 days of the Outage Event for which an exclusion is being requested." Tampa Electric seeks a waiver of this provision in order that it may file and the Commission may consider the Company request submitted with this petition to exclude Outage Events that occurred on April 11 and 12, 2004 and on June 13, 24 and 26, 2004. In support of its waiver petition, Tampa Electric states as follows:

Introduction

1. Tampa Electric is a public utility subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes. The company's principal place of business is located at 702 North Franklin Street, Tampa, Florida 33601.

2. All notices, pleadings and correspondence required to be served on Tampa Electric should be directed to:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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Background

3. As is more fully described in the accompanying Request to Exclude Outage Events, Tampa Electric experienced severe weather conditions throughout its entire service territory on April 11 and 12, 2004 and on June 13, 24 and 26, 2004 that caused extensive and wide-spread service interruptions to its customers. When the extraordinary weather events of April 11 and 12, 2004 occurred, Tampa Electric was not aware that these conditions were actually a weather phenomenon known as a Mesoscale Convective System or Complex. A Mesoscale Convective System, or MCS, is a system of thunderstorms that becomes organized on a scale larger than individual thunderstorms, and normally persists for several hours or more. When of sufficient size, shape and duration, the phenomenon is also known as a Mesoscale Convective Complex, or MCC. Due to the massive size and scale of these weather systems, they are not easily identified by normal ground-based weather radar, and generally require the perspective of infrared satellite photographs to identify their characteristic shape and other attributes.

4. The occurrence of a MCS in the deep Southeast region of the country is extremely rare and, in fact, it appears that no previous occurrence in Florida has been recorded by the National Weather Service (“NWS”). Prior to review of the request to exclude an outage event filed by Florida Power & Light Company (“FPL”) in Docket No. 040449-EI, and the request filed by Progress Energy Florida, Inc. (“Progress Energy”), in Docket No. 040792-EI, the

company was unaware that such a weather phenomenon existed. The severe weather system described as a MCS in FPL's request occurred on April 13, 2004, the day after the two-day outage event described in Progress Energy's pending petition. Tampa Electric was similarly affected by the same systems that affected FPL and Progress Energy. Upon reviewing the filings made by FPL and Progress Energy, Tampa Electric immediately began accumulating information regarding the impact the April 11 and 12 MCS had on Tampa Electric's own operations. The company's analysis revealed that it was affected in much the same way FPL and Progress Energy were by these weather phenomena. In addition, the extraordinary weather events of powerful wind and extreme lightning that occurred on June 13, 24 and 26, 2004 similarly impacted Tampa Electric's system operations, which qualifies those outages for exclusion from the company's 2004 Annual Distribution Service Reliability Report as well.

Standard for Granting the Requested Waiver

5. Section 120.542(2), Florida Statutes, establishes the following two-prong standard for granting waivers or variances to the requirements of an agency rule:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. (Emphasis added.)

6. With respect to the purpose of the underlying statute, Rule 25-6.0455 in general and subsection (3) in particular implement a number for specific statutory provisions from Chapter 366 that collectively establish the Commission's broad authority over the reliability of service provided by electric utilities subject to its jurisdiction. In approving Staff's recommendation to adopt the current version of Rule 25-6.0455 at its August 20, 2002 Agenda Conference, the Commission recognized that:

. . .the information required by the revised rules will enable the Commission to better track reliability and quality of service and to better measure improvements. Better measurement and reporting has also led to improvements in reliability.

In addressing the purpose of the new subsection (3) that allows the exclusion of outage events other than those specifically identified in subsection (2), if a utility demonstrates that it could not have reasonably prevented the outage event and that the event was not within its control, the Staff recommendation adopted by the Commission stated:

The purpose of allowing the utility to exclude from its report an outage event over which it has no control and cannot reasonably prevent is to ensure that the reliability report fairly represents the quality of service the utility delivers to its customers.

7. There can be little doubt the Commission recognized that, in carrying out its statutory authority to evaluate a utility's performance in providing reliable service, it is important to distinguish between those outage events that are reasonably within the utility's control and those that are not. Granting the rule waiver requested herein will achieve the purpose of this statutory authority by providing the Commission the opportunity to determine whether the outage events on April 11 and 12 and the outage events on June 13, 24 and 26, 2004 were beyond the control and reasonable ability of Tampa Electric to prevent. **Conversely, no** legitimate statutory purpose will be served by preventing this question from being considered by the Commission.

8. With respect to creating substantial hardship or violating principles of fairness, a rigid and inflexible application of the rule's 30-day filing period would do both. Such an application of the rule would effectively penalize Tampa Electric because of the time required first to recognize the extraordinary nature of these weather events and then to develop the kind of information about a highly unusual weather phenomenon that is needed to submit a proper filing.

This would impose a hardship on the company by denying it the opportunity to have a significant outage event considered on its merits. The additional time required to file the exclusion request has not and will not prejudice the interests of any potential party, nor will it adversely affect in any way the ability of the Commission to consider the merits of the request fully and thoroughly.

9. Tampa Electric is seeking a waiver of the rule's 30-day filing requirement on a temporary, one-time basis, that is applicable only to the outage exclusion request accompanying this petition. Any subsequent exclusion requests by the company will be submitted in compliance with the rule's filing requirement, absent circumstances which may make such compliance infeasible or impossible. In the event, a separate, stand-alone waiver petition particular to those circumstances will be submitted with the exclusion report.

WHEREFORE, for the reasons described above, Tampa Electric respectfully requests that the Commission grant this petition for a temporary waiver of the 30-day filing requirement in rule 25-6.0455(3), Florida Administrative Code, and authorize the company to file the outage exclusion request proffered herewith.

DATED this 7th day of December 2004.

Respectfully submitted,



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