

ORIGINAL

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Subject: 050958-EI POST HEARING BRIEF
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1. This filing is to be made in Docket Number: 050958-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company
2. Attached for filing on behalf of Office of Public Counsel is OPC'S Post Hearing Brief
3. There are a total of twenty (20) pages for filing

Phyllis W. Philip-Guide

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DOCUMENT NUMBER-DATE

02861 APR-25

FPSC-COMMISSION CLERK

ORIGINAL

1BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company

Docket No.: 050958-EI
Filed: April 2, 2007

OFFICE OF PUBLIC COUNSEL'S POST HEARING BRIEF

INTRODUCTION

This case is yet another example of a trend which is occurring in the electric utility regulatory environment where there are increasing numbers of requests by companies to recover base rate type costs through clause recovery mechanisms. If a company is successful in its request, the result is a reduction of business risk already compensated for through base rates substituted with the minimal risk of dollar for dollar recovery through clauses. This allowance also grants companies a back door rate increase for costs that should be recovered through base rates.

In this docket, TECO has requested recovery through the Environmental Cost Recovery Clause (ECRC). Specifically, the utility in this case has requested recovery for 13 projects, 12 to be recovered through the ECRC. After conducting extensive discovery on these 13 projects, four projects failed to pass scrutiny and should not be passed through the ECRC.¹ As a matter of policy, the Commission should strictly apply Section 366.8255, Florida Statutes, which provides electric utilities may only recovery through the ECRC those costs that are necessary and required for complying with environmental laws or regulations. If a project fails to meet this standard, the Commission should not

¹The parties stipulated to Issue 2 that the remaining eight projects appeared to be eligible for recovery through the ECRC. One project's proposed recovery is through base rates.

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allow recovery through the ECRC, even if the project might be recoverable through base rates. The Commission should not allow TECO to pass through the ECRC \$14,411,000 in costs associated with the four projects not necessary to comply with environmental laws or regulations.

STATEMENT OF BASIC POSITION

* The proposed electric isolation project, split inlet and outlet duct projects, and the gypsum fines filter project are not required to comply with the Consent Decree, or any other environmental law, and are not eligible for recovery through the ECRC.*

SUMMARY OF ARGUMENT

Four of the Big Bend Flue Gas Desulfurization (FGD) System Reliability Program projects are not eligible for recovery through the ECRC. For a project to be eligible for recovery through the special environmental cost recovery, the project must be required to comply with an environmental law or regulation. The proposed electric isolation project, split inlet and outlet duct projects, and the gypsum fines filter project are not necessary or required to comply with Paragraph 40 of the Consent Decree, nor any other environmental law or regulation, and therefore are not eligible for recovery through the ECRC clause. (TR 121)

Section 366.8255, Florida Statutes, provides that electric utilities may petition the Commission for all of its prudently incurred costs that are necessary and required for complying with environmental laws or regulations for recovery through the ECRC. However, all costs recovered through base rates or other recovery mechanisms are required to be excluded from recovery through the ECRC clause. Other than in the

context of determining prudence, a cost benefit analysis is a secondary issue addressed only after the conclusion is reached that a project is required to comply with a new environmental law or regulation.

Moreover, just because a cost may be environmentally related does not automatically qualify it for recovery through the cost recovery clause. Nor does the desirability of a project, which is not environmentally required, make that project eligible for ECRC recovery. As noted by the Commission in Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, projects, which may be warranted and even desirable for other reasons but which are not necessary to comply with any governmentally imposed environmental compliance mandate, cannot be passed through in the ECRC clause. Id. at page 8. As Witness Merchant testified “the Commission found that capital projects that were implemented at management’s discretion, but were not necessary to comply with any governmentally imposed environmental compliance mandate, were not appropriate to be included in the ECRC even through the projects were commendable. (TR 104)

Even if certain costs are not eligible for recovery through the ECRC, so long as those costs are eligible for recovery through base rates they are being recovered while the utility is earning a fair rate of return. Base rates are designed to allow a utility an opportunity to recover its prudent operating costs and a reasonable rate of return on its investment in utility plant. (TR 98) While base rates are designed to allow a utility to recover its costs, ratemaking principles recognize that rates are set on a prospective basis and that the level of a particular cost may increase, decrease, or go away altogether from those cost levels used in setting rates. (TR 99) As witness Merchant noted “a particular expense level increase does not automatically cause a utility to earn less than its fair rate

of return on its investment or to not recover the expense.” If the utility earns within the range, generally set at 100 basis points on either side of the mid-point, then the utility is earning a fair rate of return on its investment and is recovering its prudent operating costs. (TR 100) However, allowing cost shifting of normal base rate type costs and those costs which do not legitimately meet the definition of costs that qualify for ECRC recovery results in an unwarranted increase in overall rates borne by customers. The increase in clause revenues directly benefits shareholders and the utility to the detriment of the utility’s customers. (TR 101)

TECO has claimed that these four projects - electric isolation, split inlet and outlet ducts, and gypsum fines filter - are necessary to meet Paragraph 40 of the Consent Decree (CD). Paragraph 40 of the CD provides that the Big Bend Units 1- 3 may not by-pass the FGD equipment during outages except for those permitted circumstances allowed under the Clean Air Act’s New Source Performance Standards (NSPS) after January 1, 2010, (for Unit 3) and January 13, 2013, (Units 1 and 2).² (TR 124) As witness Hewson noted the CD was a settlement of litigation with the EPA due to allegations that TECO had made major modifications to the Big Bend Units 1-3 subjecting the units to the same requirements as new units and requiring retrofitting of additional environmental equipment. (TR 124) The CD’s future 2010 and 2013 implementation dates for the final emission rate limitations cannot be considered a new environmental law or regulation since TECO, EPA, and state regulators have known about these final limitations since 2000. (TR 133) Further, being roughly 6 years old, the CD itself would not be considered a new law or regulation. (TR 133)

² Big Bend Unit 4 currently is required to operate scrubbed at all times.

But even if the future implementation dates contained in the CD were considered a “trigger” requirement that Big Bend Units 1-3 run without by-passing the FGD equipment, the future implementation dates do not “trigger” a requirement of reliability. TECO’s claim is based on its faulty premise that the CD’s requirement to run scrubbed is the same as the reliability of a particular unit. All that is necessary for TECO to meet the requirement to run scrubbed is the appropriate environmental scrubber equipment. TECO’s witness Bryant conceded that Big Bend Units 1, 2, and 3 have operational FGD systems which they run to scrub emission when they need to now. (TR 34) He also agreed that Big Bend Units 1, 2, and 3 have the FGD systems required to run scrubbed currently. (TR 35)

Paragraph 40 does not address FGD system reliability, although TECO was required by Paragraph 31 of the CD to identify projects which would improve reliability through its Phase I and Phase II FGD plans to the EPA. (TR 125) Even in its Quarterly reports to the EPA regarding its compliance with the CD, TECO has placed these four projects under the modifications to the Big Bend units that are not required by the CD. (TR 129-130) Although Paragraph 31 of the CD permitted TECO to modify its Phase II FGD plan as necessary³, none of the four projects were identified in TECO’s Phase I or Phase II FGD plans for the Big Bend units which identified projects necessary to comply with the CD. (EXH 2 – Consent Decree, TR 126) Witness Hewson observed that “[b]y placing these four projects on their Quarterly Compliance Report listing, TECO has

³ 31(1) “Each phase of the plan proposed by Tampa Electric shall include a schedule pursuant to which Tampa Electric will implement measures relating to operation and maintenance of the scrubbers called for by that phase of the plan, within sixty days of its approval by EPA. Tampa Electric shall implement each phase of the plan as approved by EPA. Such plan may be modified from time to time with prior written approval of EPA.”

explicitly acknowledged that they are not associated with compliance with the Consent Decree and therefore would not qualify for ECRC as a new environmental requirement.” (TR 130)

Although TECO’s says that “but for” the CD it would not have engaged in these projects, what TECO actually means is “but for” its belief that it can recover these costs through the ECRC it would not have undergone these projects. If the utility has a choice, as it does here, not to engage in a project, that project is discretionary and not eligible for recovery through the ECRC. Moreover, mere assertions that a project is required without an independent, demonstrable need for the project to meet a particular environmental requirement is insufficient to satisfy the criteria set forth in the statute.

The electric isolation project for Units 1-4 is to provide a new transformer to power new Induced Draft (ID) fans for Unit 3 boiler. These Unit 3 boiler ID fans are not dedicated to the FGD system. Further, since the current transformer system has historically been highly reliable, the proposed transformer project will have no measurable effect on the reliability of the FGD system. (TR 131) There are more cost-effective boiler fan options to move boiler exhaust gases through the Selective Catalytic Reduction (SCR) and FGD systems.

The split inlet duct and outlet duct projects are not necessary to meet an environmental law or requirement as evidenced by TECO’s original election to combine the Unit 3-4 inlet duct and outlet duct into one scrubber to reduce the environmental compliance costs. While the split duct projects are being done on environmental equipment, the modifications are purely discretionary in nature and have no substantive impact on the system reliability. (TR 131)

Finally, the gypsum fines filter project is a revamping of the gypsum disposal system to make a saleable byproduct and reduce landfill costs. The existing system is operating within the original design parameters. (TR 132) While the proposal may make economic sense to make a more commercially saleable gypsum product, it is unnecessary for the operation of existing system or to meet any environmental law or regulation, thus is discretionary in nature and not recoverable through the ECRC. (TR 132)

Witness Merchant testified that “[b]ecause special cost recovery clause treatment enables the utility to avoid absorbing the expense through base rate earnings, the utility has a powerful financial incentive to steer as many costs as possible through recovery clauses. (TR 102-103) Because of the potential for abuse of the special mechanism, the Commission should be ever vigilant for claims that new or unusual costs belong in a cost recovery clause as opposed to being absorbed in base rates. (TR 103) Under close examination, none of the four disputed projects meets the strict statutory requirement necessary for special recovery under the ECRC.

STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Are the following projects in Tampa Electric Company's Big Bend FGD System Reliability Program costs or expenses incurred by Tampa Electric in complying with environmental laws or regulations and, therefore, entitled to be recovered under the environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes?

(a) Big Bend Units 1-4 electric isolation

* The electric isolation project for Big Bend Units 1-4 is not eligible for recovery thorough the ECRC because it is not required to meet an environmental law or regulation. The main function of the proposed electric isolation project is to provide a new transformer for the Induced Draft fans serving the Unit 3 boiler system, which is not an environmental system.*

ARGUMENT

The crux of this issue is whether the electric isolation project proposed by TECO is eligible for recovery through the ECRC. The testimony bares out that the electric isolation project for Big Bend Units 1-4 is not eligible for recovery thorough the ECRC under the statutory criteria. For the cost of a project to be eligible for recovery through the special environmental recovery mechanism, the project must be required to comply with an environmental law or regulation. See, Section 366.8255, Florida Statutes. A discretionary project, which may be beneficial for other reasons, is not eligible for special recovery even through it may be appropriately recovered through base rates. Order No. PSC-94-0044-FOF-EI at page 8.

Witness Stamberg testified that 92.6 percent of the load from the new transformer will be used to power two new Induced Draft (ID) fans for Unit 3. This percentage was based upon TECO supplied data on their anticipated connected loads to the transformer. (TR 154) As he noted, the two new ID fans are part of the boiler system for Unit 3 only – not directly part of the environmental control equipment. (TR 154) Witness Stamberg further testified that only 0.4% of the total project load was going to the FGD equipment, 0.6% for SCR specific equipment, and 6.4% to unidentified “motors and lights and other equipment”. (TR 154) Without the addition of these two larger fans, these other smaller load requirements would not have justified the use of a 20,522 KVA transformer. (TR 154) In other words, if TECO had chosen not to put in these ID fans for boiler #3, the new transformer which is the bulk of the \$6.6 million dollars would be unnecessary. (TR 147) More cost-effective fan systems are available for Unit 3 and these other alternatives were recommended by TECO’s engineers – Sargent and Lundy – over the higher cost electrical system configuration that TECO has requested for cost recovery in this docket.

TECO's witness Smolenski conceded in his rebuttal testimony that at least 18.3% of the new transformer load is non-environmentally related. (TR 225) Mr. Smolenski claimed that the requirement for SCRs to be placed on Units 3-4 caused the need for additional fans leading to TECO's choice of using the ID fans for Unit 3. (TR 89) However, looking at the Sargent and Lundy Study attached to witness Smolenski's testimony as Exhibit JVS-2, Document No. 3, it is clear that the ID fan was not the only option available to TECO for Unit 3, but rather was the most expensive. (EXH 5, Document 3 at p. 91) In fact, the Sargent and Lundy Study recommendation on the best fans to meet the SCR requirement were the forced draft (FD) fan alternatives. (EXH 5, Document 3 at p. 91) The Sargent and Lundy Study stated "Both of these FD fan alternatives were clear winners over the other options by a large margin, but there is an insignificant margin between the two of them." Id. A review of Section 5.10 of the Sargent and Lundy Study shows had TECO chosen the FD fan options for Unit 3, the overall maximum connected horsepower of the auxiliary system would have been reduced and the present motors could have retained. (HE 5, Document 3 at p. 76) The additional variable frequency drive systems (VFD) would allow TECO to keep the existing Unit 3 boiler FD fans. This would not have required the additional cost of a new transformer which is the majority of the \$6.6 million cost.

However, according to the same Sargent and Lundy Study, the addition of the ID fans requires 12,000 kVA. The study noted that the conversion of balanced draft operation (ID fans) will require the present 4160 V auxiliary system to accept an additional 3000 kVA. (EXH 5, Document 3 at p. 76) The result of TECO's choice to use the ID fans for its system is a new transformer. While the SCR additions may have

resulted in the need to modify the existing FD fans, it is clear from TECO's own study that either retrofitting the existing fans with a new rotating element (\$423,000) or adding a VFD to the existing fans (\$709,000) are all that was necessary. In fact, these two options were also the most cost effective means of addressing any SCR issue. (EXH 5, Document 3 at p. 92) Thus, if the Commission were inclined to allow any of the cost associated with fan modification due the addition of the SCR systems through the ECRC, the cost should be limited to these costs.

In witness Smolenski's rebuttal testimony, he attempts to shows that 21.9% of the load on the transformer is attributable to the FGD and 59.8% is attributable to the SCR by indirect calculation (not actual connected load). (TR 225) However, witness Smolenski only reaches these percentages by "attributing" the load freed up from existing transformers required to run the new proposed ID fans to the current FGD system. (TR 224) Moreover, when witness Smolenski discusses the loads he refers to the circuit breakers which are not the same as referring to being served from a transformer. (TR 223) So, while witness Stamberg is discussing the new transformer load - the largest cost causer of the electric isolation project - TECO's witness attempts to misdirect the discussion to circuit breaker loads that are being transferred due to the addition of the new ID fans. (TR 223-224) Moreover, when witness Smolenski discusses the additional load of the "FGD reliability project," he is talking about the increased 12,939 kVA on the Big Bend electrical system due to the addition of these two ID fans for Unit 3 boiler and does not acknowledge more cost-effective boiler fan alternatives. (TR 225-226)

Further, TECO's witness Smolenski's claim that OPC did not address TECO's argument regarding separating the Big Bend Units 3 and 4 electrical system being

essential to unit reliability and system security is incorrect. (TR 226) First, the reliability and security of Unit 3's electrically system is clearly not an environmental issue and TECO does not cite any environmental law or regulation which requires separately operating electrical systems. Second, witness Stamberg testified "there were no recorded forced derates over the last 5 years because of transformer failure or lack of transformer capacity of I.D. fans 3A and 3B." (TR 155) Historical evidence does not support a change in the electrical system due to reliability issues.

Moreover, TECO concurred with the assessment that the electric isolation project was not required by the CD by listing the project under those not required by the CD in its Quarterly Reports. (TR 155) TECO witness Crouch's attempt to create a distinction between "near-term" capital improvements and "long-term" capital improvements is not supported by the language of the CD itself. (TR 202-203) As noted previously, Paragraph 31(a) allows for TECO's Phase II optimization plan to be modified from time to time as need. (EXH 2, Consent Decree) If TECO actually believed that the electric isolation project was required by the CD, it would have sought to amend their plan. But TECO did not, as evidenced by their own reporting of the project to the EPA as a project not required by the CD in its Quarterly Report. (TR 129-130) Rather, as TECO witness Crouch acknowledged, TECO reported the electric isolation project as not required to meet the CD because TECO wanted to achieve the benefit of the EPA's covenant not to sue for environmental civil claims with respect to future capital projects as provided for in Paragraph 44 of the CD. (TR 203) As witness Hewson pointed out:

the pertinent part of Section 44 for this proceeding is a requirement 44.B(2) that TECO must report all physical changes or changes in Big Bend method of operation not required by the Consent Decree (emphasis added) until December 31, 2012 that meet all the following criteria

1. TECO expects to spend more than \$250,000;
2. TECO considers as a capital expenditure; and
3. Meets applicable criteria under 40 CFR Section 52.21(b)(9).

(TR 125)

Witness Crouch attempted to suggest that because TECO previously reported under Paragraph 44(B) the SCR addition, clearly required by the CD, by implication the Big Bend Reliability Projects are similarly required by the CD, even though TECO reported them under this paragraph. (TR 203) Witness Crouch's own testimony states that under the CD, if TECO choose to continue to burn coal they need to put in SCRs. (TR 203) Thus, it appears that TECO was incorrect in listing any SCR project under Paragraph 44(B). Moreover, witness Crouch suggested that reporting a project under Paragraph 44(B) - asserting to the EPA that these projects are not required under the CD - should only be interpreted as an attempt to secure protection under this "safe harbor" provision rather than meaning that the projects are not required by the CD. This argument is illogical. (TR 203) Such "safe harbor" interpretation would cause a major inconsistency in the way TECO reports projects to different agencies - i.e. for the EPA the project is not required by the CD and for the Commission the same project is required by the same CD. TECO must not be allowed to have it both ways and must be held to its own self reporting to the EPA on its settlement with them.

Other than TECO's poor attempt to make a claim that the need to run scrubbed required them to undertake these "reliability projects," TECO points to no other applicable portion of the CD or other environmental laws or regulation. As witness Stamberg testified the electric isolation project is neither reasonable nor prudent under the ECRC clause. He stated that "[g]iven the electrical systems demonstrated high

availability and that it is designed to service primarily the large I.D. fan load that is not part of the pollution control system, the electrical isolation system project with its proposed new transformer is not necessary to achieve compliance with the consent decree or any other known environmental law or regulation. (TR 155)

(b) Big Bend Units 3-4 split inlet duct and outlet duct

The Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. The scrubber system's original combined duct system design - without the splitting of the inlet and outlet ducts - meets current environmental law. Thus, the split inlet duct and outlet duct projects are discretionary projects not entitled to special recovery treatment.

ARGUMENT

This issue is whether the Big Bend Units 3-4 split inlet duct and outlet duct projects are eligible for recovery through the ECRC. The evidence and the testimony supports the conclusion that the Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. As noted in the previous issue, projects must be required to comply with environmental laws or regulations, not merely discretionary modifications to the plant, to warrant special recovery mechanism treatment.

Witness Stamberg testified that TECO is not alone in electing to combine multiple units into a single FGD system in order to capture the economies of scale capital savings. (TR 160) Further, he noted that at the time the CD was negotiated and signed, the parties did not believe that splitting the ducts would be necessary to comply with the CD and

thus splitting the duct work was not included on the list of needed projects to optimize FGD performance. (TR 160)

The only justification TECO has presented for passing this project through the ECRC is that the splitting of the duct work is necessary to maintain or improve reliability. But witness Stamberg testified that over a five year period, a maximum of only 1.864 hours per year of forced outages have occurred due to problems with the duct work system. (TR 159) TECO's study assumed avoided forced rate for the split duct Group A projects would total 192 hours per year, which is between 103 and 640 times higher than the historic outage rate. (TR 103)

TECO's witness Smolenski attempts to justify the higher outage hours per year, by including 11 de-integration events and 9 other maintenance outages where both Big Bend Units were offline. (TR 233) Witness Smolenski used the term de-integration to refer to times when one or more of the Big Bend scrubbers were not operating. (TR216) This is not the same as an event causing a forced outage of the generating unit. Nor does Witness Smolenski attempt to exclude de-integration events that would not have caused forced outages of the Big Bend Units 3 and 4 generation or could have been done while the units were out of service for other reasons. Witness Stamberg's review was of those duct work maintenance events attributed by TECO to duct work maintenance. (TR 157) He also looked for those events which would cause forced outages of the generating units. Of the two events identified, it appeared based on the little description provide by TECO that only one of the events (1.50 hours) would have cause a de-rate or outage. The other event (7.82 hours) appears to be a FGD problem in which duct maintenance was discretionary and coordinated with other FGD system maintenance during the event. (TR

158) So contrary to the impression that all current de-integration events would lead to outages, it is likely that they could be coordinated with other maintenance events. TECO's own witness Smolenski noted that TECO will have to abandon its current far less proactive maintenance philosophy (reactionary) to a more proactive preventive maintenance approach. (TR 231) In other words, TECO will have to take advantage of the numerous occasions that Big Bend Units 3-4 are down for other reasons to complete discretionary duct work repairs.

Based on the historic force outage rate, the split duct projects would have a net present value of savings of only \$10,000 to \$73,500 for a project that cost \$5 million. (TR 159) Witness Smolenski also conceded that any cost-benefit analysis is an issue that would be addressed after you addressed whether or not that an activity is legally required to comply with an environmental law or regulation. (TR 86) Since the split duct work projects according to TECO's own reporting to the EPA are not required by the CD, a cost-benefit analysis is moot. As noted by witness Hewson, the split the ductwork projects were listed under the Paragraph 44(B) section of TECO's Quarterly Compliance Reports as not required by the CD. (TR 131) In any event, the split duct work projects would not appreciably improve the reliability of the FGD system. (TR 160) Nor would it have any impact on the current scrubbers' ability to remove 95% of the SO₂ emission required by the CD. (TR 91)

Moreover, the Commission should apply the criteria strictly and allow only the costs for projects required by an environmental law or regulation to be flowed through the ECRC. As witness Merchant pointed out "[b]ecause special cost recovery clause treatment enables the utility to avoid absorbing the expense through base rate earnings,

the utility has a powerful financial incentive to steer as many costs as possible through recovery clauses. (TR 103) As witness Merchant demonstrated in her testimony, if costs are allowed to be shifted to a clause, base rates will not change; but the customers pay additional fuel revenues. However, if the cost is absorbed through the revenues already being paid by customers through base rates, the customer's bill will not increase because both clause and base rate revenues will be unchanged. (TR 102) Such cost shifting results in an unwarranted increase in overall rates borne by the customers for the benefits of the shareholders and to the detriment of the ratepayers. (TR 101) For all these reasons, the split inlet and outlet duct work projects are not eligible for recovery through the ECRC.

(c) Gypsum fines filter

* The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. The gypsum fines filter project is being done to make a saleable by-product and reduce landfill costs. As such, while commendable, the cost is not being incurred to comply with an environmental law or regulation.*

ARGUMENT

The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. The FGD process creates a gypsum by-product. As witness Stamberg testified the gypsum dewatering system was originally designed and was operated in the past to make gypsum suitable for disposal. (TR 184) While the gypsum by-product could have been disposed of in landfills, TECO noted that it has striven to make commercial saleable by-products rather than treating them as waste to be disposed of in landfills. (TR 239-240) Even

though this is commendable, the existing environmental laws and regulations only required that the FGD by-product, gypsum, be appropriately disposed of, not made into wallboard quality through the dewatering process. Since TECO's current gypsum dewatering system already makes disposable gypsum which TECO sells, it appears that TECO's request for additional funds for the fines filter are to make an improved saleable gypsum product. (TR 184)

Moreover, TECO did not include in its Phase I or Phase II plans any of the elements of the gypsum dewatering system as part of its need to comply with the CD requirements. (TR 162) The plans generally identified that a study would be conducted to determine what spare parts were needed for the full range of Big Bend Station's process elements needed to improve system reliability including the gypsum dewatering system. (TR 162) But neither TECO's study nor its subsequent Quarterly Reports to the EPA identified that a gypsum fine filter was a needed spare part. (TR 162)

TECO's witness Smolenski claimed that TECO simply wanted to achieve a design configuration that would mitigate the decreased reliability brought about by the higher moisture content gypsum that would otherwise be produced without a fines filter as part of the dewatering process. (TR 240) As noted earlier, the current gypsum dewater system already makes a disposable gypsum, the increase in moisture content impacts the salability not reliability. As witness Stamberg noted TECO's current gypsum fines filter meets the design criteria and the guarantee for certain particle size distribution. (TR 163)

While witness Smolenski insisted that TECO was not asking for this project to make more saleable gypsum (TR 240), he conceded that the value of the gypsum could increase as a result of being dryer. (TR 90) As witness Stamberg noted "[t]he additional

funds for gypsum filter system and vacuum filter appear to make an improved gypsum suitable for sale into the gypsum market as a more economical choice than making gypsum suitable for disposal.” (TR 164) In contrast to the gypsum fines filter project, witness Stamberg concluded that the vacuum pump upgrades would likely improve future FGD operation and reliability and thereby would be an appropriate maintenance item to include in the ECRC. (TR 164)

As witness Stamberg testified “[w]hile upgrading the gypsum to salable grades may be laudable and maybe economical, it would not be considered as necessary to comply with the requirements of the Consent Decree.” TECO’s request for the fines filter project is driven by economic and operation considerations, not an environmental requirement. Moreover, any economic benefit derived from the increased sales price of the gypsum should be flowed back to customers because customers ultimately will have paid for the equipment through the revenues collected irrespective of collection methodology. Nevertheless, since the gypsum fines filter project is not required to meet a new environmental law or regulation, while economically commendable, it is not eligible for recovery through the ECRC. (TR 164)

CONCLUSION

For the reasons stated in the brief, the Commission should not allow TECO to pass through the ECRC the costs associated with the electric isolation project (\$6,600,000), the split inlet duct project (\$116, 000), the split outlet duct project (\$4,829,000), and the gypsum fines filter (\$2,866,000).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 2nd day of April, 2007, to the following:

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