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# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** April 10, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Draper)  
Office of the General Counsel (Bennett)

*Handwritten initials and signatures:*  
EDD  
JBB  
TJB

**RE:** Docket No. 070729-EI – Petition for approval of three performance guaranty agreements by Tampa Electric Company.

**AGENDA:** 04/22/08 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 08/17/08 (8-Month Effective Date)

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\070729A.RCM.DOC

### Case Background

On December 17, 2007, Tampa Electric Company (TECO) filed a petition for approval of three performance guaranty agreements (PGA): Performance Guaranty Agreement (Tariff Sheet Nos. 7.880-7.910), Performance Guaranty Agreement for mining facilities (Tariff Sheet Nos. 7.915-7.945), and Performance Guaranty Agreement for residential subdivision development (Tariff Sheet Nos. 7.950-7.970). TECO proposes to require the agreements in cases where applicants for electric service require a significant expansion of TECO's distribution facilities to meet projected loads that, in TECO's opinion, may not materialize. Under the proposed agreements, the applicant will be required to give a performance guaranty. If the revenues materialize as projected, TECO will refund or cancel the performance guaranty as appropriate. The purpose of the PGAs is to ensure that TECO's general body of ratepayers is held harmless in

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the event a customer's load fails to meet projections, and therefore fails to produce revenues sufficient to offset the cost of the system expansion.

On February 25, 2008, TECO filed responses to Staff's informal data request and a revision to its proposed tariff that included certain corrections. In Order No. PSC-08-0128-PCO-EI, issued on February 28, 2008, the Commission suspended TECO's proposed tariff. On March 20 and April 2, 2008, TECO filed revisions to its proposed tariff.

The Commission has approved two similar performance guaranty tariffs for Florida Power & Light Company (FPL). In Docket No 001579-EI, the Commission approved FPL's initial PGA tariff with the condition that FPL file status reports for a two-year period to monitor the application of the tariff.<sup>1</sup> The tariff allows FPL to require the agreement in cases where applicants for service require a significant expansion of FPL's facilities to meet projected loads that, in FPL's estimation, are speculative and may not materialize. The status reports showed that for the period December 2000 through March 2003, FPL requested agreements from six applicants.

In Docket No. 031074-EI, the Commission approved some minor modifications to FPL's existing PGA tariff and approved a new PGA tariff for a three-year period with the tariff expiring for new customers.<sup>2</sup> FPL's new PGA tariff applies to customers who request specialized electric facilities that would not likely be used by other customers should the initial customer cease operations. The Commission required monitoring reports of the new PGA for the period March 2004 through March 2007. After the expiration of the three-year period in 2007, the Commission approved FPL's request that the second PGA be made permanent and that the annual reporting requirements be discontinued.<sup>3</sup>

The Commission has jurisdiction pursuant to Sections 366.04 and 366.06, Florida Statutes.

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<sup>1</sup> See Order No. PSC-01-0031-TRF-EI, issued January 8, 2001, in Docket No. 001579-EI, in Re: Petition for Approval of a Performance Guaranty Agreement by Florida Power & Light Company.

<sup>2</sup> See Order No. PSC-04-0406-TRF-EI, issued April 19, 2004, in Docket No. 031074-EI, in Re: Petition for approval of changes to existing performance guaranty agreement and for approval of a second performance guaranty agreement by Florida Power & Light Company.

<sup>3</sup> See Order No. PSC-07-0536-TRF-EI, issued June 26, 2007, in Docket No. 070291-EI, in Re: Petition for permanent approval of a performance guaranty agreement, including approval of first revised Tariff Sheet No. 9.946 by Florida Power & Light Company.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve TECO's proposed Performance Guaranty Agreement (Tariff Sheet Nos. 7.880-7.910)?

**Recommendation:** Yes, the proposed tariff should be approved, provided TECO files monitoring reports as described in the staff analysis. (Draper)

**Staff Analysis:** TECO's proposed PGA tariff applies to applicants for electric service (i.e., customers) that require a significant expansion of TECO's present electric facilities to meet projected loads that, in TECO's opinion, are speculative and may not materialize. The purpose of the PGA is to ensure that the general body of ratepayers is held harmless in the event that a customer's load fails to meet projections, and therefore fails to produce revenues sufficient to offset the cost of the system expansion. If revenues materialize as projected within five years following the in-service date of the system expansion, TECO will refund or cancel the guaranty.

To support the proposed PGA, TECO states that the company has provided service to several businesses in recent years where service requests were excessive, or where the business was deemed speculative by TECO because of a dependence on unproven technology or operation within a volatile market. TECO states that these businesses included an electronics plant manufacturing parts for a new lighting technology, businesses in the building products industry, a communications company, a beverage company, and a manufacturing company utilizing a new technology. TECO states that these businesses have since failed to perform at the levels required to generate sufficient revenue to cover the investment made by TECO or have been overly delayed in coming on-line.

Rule 25-6.064, Florida Administrative Code, allows TECO to require an up-front contribution-in-aid-of-construction (CIAC) when a customer's new or updated facility requires an expansion of TECO's electric system that exceeds four times the expected annual revenues generated by the customer (investment allowance). However, expected revenues are heavily dependent on the customer's projection of load, especially if the business involves a new technology or product about which the utility has little or no historical knowledge. The customer has an incentive to maximize load projections to minimize CIAC. If the customer's load fails to meet projections on which the investment allowance was calculated, TECO's general body of ratepayers will end up subsidizing the system expansion cost.

TECO is now proposing to require those applicants for electric service deemed speculative by TECO, as described above, to sign the PGA. The PGA will allow TECO to complete the required system expansions with assurance that TECO's general body of ratepayers will not bear the incremental costs incurred by TECO in the event the projected load does not materialize.

Under the PGA, the customer is required to post a performance guaranty in the form of cash, a surety bond, or bank letter of credit. TECO determines the amount of the performance guaranty by estimating the cost of the requested system expansion less any CIAC paid by the customer. That amount is multiplied by a carrying cost factor of 1.53. The carrying cost factor

represents the carrying cost (return on ratebase, depreciation, property taxes, and insurance) to TECO over the 30-year life of the investment.

During the 5-year term of the agreement, TECO will compare the incremental base revenues collected from the customer to the performance guaranty amount. Incremental base revenues are the difference between the actual revenues received (“Base Revenue”) and those revenues TECO would have received from a more typical customer (“Baseline Base Revenue”). The Baseline Base Revenue equals the base revenue received for electric service at the location for the 12-month period prior to the in-service date.

TECO will refund or cancel the performance guaranty in whole if, at the end of five years or any time during the term of the agreement, incremental base revenues equal or exceed the performance guaranty amount. If the customer has posted a surety bond or letter of credit, such bond or letter of credit will be released.

The 5-year period is consistent with Rule 25-6.064(2)(c), Florida Administrative Code, which states that the expected annual base energy and demand charge revenues to offset CIAC shall be estimated for a period ending not more than five years after the new or upgraded facilities are placed in service. The FPL PGA tariffs provide for a 3-year term. Staff believes that TECO’s proposed 5-year term benefits the customer by providing a longer time period to produce revenues sufficient to offset the PGA amount posted.

TECO will not retain the full PGA amount over the 5-year period. Customers have the right to reduce the face value of the surety bond or letter of credit on an annual basis to reflect the difference between the PGA amount and the incremental base revenues collected in the previous 12-month period. If the customer elects to post the PGA in cash, TECO will reduce the cash balance by the amount of the previous 12-month’s incremental base revenue collected and provide an annual bill credit or refund check.

If at the end of the 5-year period the total incremental base revenues received are less than the performance guaranty amount posted, then a settlement will be made. At that time, the customer who posted a cash guaranty will receive a refund equal to the amount of the incremental base revenues paid during the 5-year period. The remaining balance of the cash performance guaranty is retained by TECO. Customers who provided a letter of credit or surety bond will be required to pay TECO an amount equal to the difference between the performance guaranty and incremental base revenues paid during the five-year period. TECO also has the option of drawing down the surety bond or letter of credit.

Monitoring reports. Since the decision on when to require a performance guaranty is left entirely to TECO’s discretion, staff recommends that, as with FPL’s PGA tariffs, the Commission monitor TECO’s application of the tariff. TECO should file three status reports that include the following information: for each agreement requested from an applicant, TECO should provide an explanation of why the agreement was requested, the amount of the performance guaranty requested, whether the applicant agreed to sign the agreement, and the total achieved incremental base revenues. The first monitoring report should contain data from the first 12-month period that the tariff is effective, the second report shall contain data from the second 12-month period that the tariff is effective, and the third report shall contain data from the

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third 12-month period that the tariff is effective. The reports should be submitted 30 days after the end of the 12-month period.

Staff believes TECO's proposed PGA is appropriate because it provides protections for TECO's general body of ratepayers in the event the projected loads of customers do not materialize. The PGA also provides an incentive to applicants to realistically estimate their need for electric service. Therefore, staff recommends approval of TECO's PGA tariff, monitored as provided above.

**Issue 2:** Should the Commission approve TECO's proposed Performance Guaranty Agreement for mining facilities (Tariff Sheet Nos. 7.915-7.945)?

**Recommendation:** Yes, the proposed tariff should be approved, provided TECO files monitoring reports as described in the staff analysis. (Draper)

**Staff Analysis:** The terms and conditions of the PGA for mining facilities (PGA mining) are the same as those of the PGA discussed in Issue 1. The only difference is the applicability of the tariff: the PGA mining applies to customers that request that TECO install facilities in order to provide electric service to relocated or expanded mining facilities.

To support the PGA mining, TECO states that occasionally it installs new electric facilities to provide service to relocated or expanded mining facilities. TECO further states that the service request may involve extensive distribution line work and non-standard voltage. Because of the transitory nature of mining facilities, and the fact that the facilities are located in isolated areas owned by the mining customer, there is a higher risk that TECO's investment will become stranded. The cost to serve the relocated or expanded mining facilities is typically recovered through a CIAC paid the customer. However, when an expansion of the mining facilities is involved, the CIAC may be offset by the projected revenues. If the projected revenues do not materialize, TECO's investment will be stranded. If revenues materialize as projected within five years following the in-service date of the system expansion, TECO refunds or cancels the guaranty.

**Monitoring reports.** Since the decision on when to require a performance guaranty is left entirely to TECO's discretion, staff recommends that, as with FPL's PGA tariffs, the Commission monitor TECO's application of the tariff. TECO should file three status reports that include the following information: for each agreement requested from an applicant, TECO should provide an explanation of why the agreement was requested, the amount of the performance guaranty requested, whether the applicant agreed to sign the agreement, and the total achieved incremental base revenues. The first monitoring report should contain data from the first 12-month period that the tariff is effective, the second report shall contain data from the second 12-month period that the tariff is effective, and the third report shall contain data from the third 12-month period that the tariff is effective. The reports should be submitted 30 days after the end of the 12-month period.

Staff recommends approval of TECO's proposed PGA mining monitored as provided above. Similar to the PGA tariff discussed in Issue 1, the PGA mining provides protections for TECO's general body of ratepayers in the event the projected loads of customers do not materialize.

**Issue 3:** Should the Commission approve TECO's Performance Guaranty Agreement for residential subdivision development (Tariff Sheet Nos. 7.950-7.970)?

**Recommendation:** Yes. (Draper)

**Staff Analysis:** The proposed PGA for residential subdivision development applies to developers who request an underground distribution system, including overhead or underground feeder lines, to serve a new residential subdivision where service may not be connected for at least two years. The application of the PGA will be restricted to those expansions that require an investment by TECO exceeding \$600,000. The amount of the performance guaranty is determined using TECO's estimate of the costs of installing the facilities, less customer's CIAC. The CIAC for underground facilities is calculated pursuant to Rule 25-6.064(3), Florida Administrative Code.

Under the agreement, the customer is required to post a performance guaranty in the form of cash, surety bond, or bank letter of credit. TECO will refund or cancel the performance guaranty in whole if within five years from the in-service date TECO has connected service to all houses for which the expansion was constructed. On a quarterly basis, the applicant may request a reduction in the performance guaranty proportionate to the percent of service connections completed at the time.

TECO states that the residential building boom in recent years has resulted in an oversupply of newly constructed homes. TECO is concerned that its continued investment in expanding distribution facilities within residential subdivisions may become stranded as builders delay housing construction due to market conditions.

Pursuant to TECO's current tariff and Rule 25-6.080(1), Florida Administrative Code, TECO may require a reasonable performance deposit when TECO is required to construct an underground distribution system through a section or sections of the subdivision where service will not be connected for at least two years. For purposes of the rule, this is considered development in a non-uniform manner.

Subdivision can be built in a uniform or non-uniform manner. According to TECO, an example of a subdivision built in a uniform manner is when the first phase of the subdivision is being built at the entrance of the subdivision, closest to existing utility facilities. An example of a subdivision built in a non-uniform manner, is when the first phase is being developed in the back of the subdivision.

Subsection (2) of Rule 25-6.080, Florida Administrative Code, states that where the subdivision is developed in a uniform manner, so that the utility may restrict the construction of its underground electric distribution system to the areas in which buildings are being constructed, then the utility may not require a deposit greater in amount than the charges calculated in accordance with the tariffs approved by the Commission. The tariffs referenced are currently interpreted to be the applicable CIAC tariffs. By approving this new tariff, it would also be included as a "tariff approved by the Commission" as referenced in subsection (2).

TECO's proposed tariff would restrict the application of the PGA to expansions that require an investment exceeding \$600,000 and require a deposit for areas developed in a uniform or non-uniform manner. In developing the \$600,000 threshold, TECO evaluated recent large subdivision developments for which TECO installed a feeder line. Based on the average feeder length and average number of lots these recently built large subdivisions required TECO developed a hypothetical subdivision model and calculated that it would invest \$600,000 to serve the model subdivision.

Staff believes that by requesting approval of this proposed tariff, TECO will be in compliance with the rule requirements. Furthermore, subsection (3) of the rule states that if the amount of the deposit is in excess of the charges permitted under the utility's approved tariff, then the excess deposit shall be returned to the applicant on a pro-rata basis at quarterly intervals on the basis of installations of service to new customers. TECO proposes upon the applicant's request to reduce the performance guaranty on a quarterly basis proportionate to service connections made.

Monitoring reports. Since the tariff provides specific guidelines on when a performance guaranty will be required, staff believes monitoring PGA's for residential subdivisions is not necessary. The tariff applies to residential subdivision developments that require an investment by TECO in excess of \$600,000.

Staff believes that TECO's proposed PGA for residential subdivision development is consistent with Rule 25-6.080, Florida Administrative Code, and should be approved. The performance deposit is designed to protect the general body of ratepayers from subsidizing the incremental costs incurred by TECO for the system expansion if the expected revenue from the subdivision does not materialize because the expected build-out is indefinitely delayed.



**Issue 4:** Should this docket be closed?

**Recommendation:** Yes. If Issues 1, 2, and 3 are approved, these three tariffs should become effective on April 22, 2008. If a protest is filed within 21 days of the issuance of the order for one or more of these tariffs, the protested tariff(s) should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Draper, Bennet)

**Staff Analysis:** If Issues 1, 2, and 3 are approved, these three tariffs should become effective on April 22, 2008. If a protest is filed within 21 days of the issuance of the order for one or more of these tariffs, the protested tariff(s) should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.