

**AUSLEY & MCMULLEN**

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET  
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10 JUL 20 AM 8:14

COMMISSION  
CLERK

July 20, 2010

HAND DELIVERED

Ms. Ann Cole, Director  
Division of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of the Continuing Need and Cost Associated with Tampa Electric  
Company's Five Combustion Turbines and Big Bend Rail Facility;  
FPSC Docket No. 090368-EI

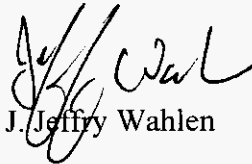
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of a Joint  
Motion for Approval of Stipulation and Settlement Agreement.

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,

  
J. Jeffrey Wahlen

JJW/pp  
Enclosure

COM \_\_\_\_\_ cc: All parties of record (w/enc.)

APA \_\_\_\_\_

ECR 12

GCL \_\_\_\_\_

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ADM \_\_\_\_\_

OPC \_\_\_\_\_

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DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the continuing need and )  
cost associated with Tampa Electric )  
Company's 5 Combustion Turbines and )  
Big Bend Rail Facility. )  
\_\_\_\_\_ )

DOCKET NO. 090368-EI

FILED: July 20, 2010

**JOINT MOTION FOR APPROVAL  
OF STIPULATION AND SETTLEMENT AGREEMENT**

Tampa Electric Company ("Tampa Electric" or "the company"), Office of Public Counsel ("OPC"), Office of Attorney General ("OAG"), the Florida Industrial Power Users Group ("FIPUG"), and the Florida Retail Federation ("FRF") (collectively referred to as the "Joint Movants") hereby move the Commission to approve the Stipulation and Settlement Agreement attached hereto as Exhibit "A", which the Joint Movants have entered into for the resolution of all issues pending in this docket and in the appeal currently pending in the Supreme Court of Florida styled Citizens of the State of Florida, Office of Public Counsel, et al., Appellants v. Matthew W. Carter II, etc., et al., Appellees, Case No. SC09-1723. In support of this Motion the Joint Movants represent as follows:

1. OPC, OAG, FIPUG and FRF are Appellants in the appeal currently pending in the Supreme Court of Florida styled Citizens of the State of Florida, Office of Public Counsel, et al., Appellants v. Matthew W. Carter II, etc., et al., Appellees, Case No. SC09-1723. OPC and FIPUG are intervenors in this docket.

2. The Joint Movants have been engaged in negotiations for the purpose of reaching a comprehensive stipulation and settlement of all issues in this docket and in the above-referenced Supreme Court of Florida appeal and thereby avoided the need for further expensive,

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FPSC-COMMISSION CLERK

time consuming litigation of these issues in hearings before the Commission and in argument before the Court. These negotiations have culminated in the execution of the attached Stipulation and Settlement Agreement. The Joint Movants request that following the Commission's review of this Joint Motion and the Stipulation and Settlement Agreement the Commission approve this Motion and the Stipulation and Settlement Agreement at its earliest possible Agenda Conference.

3. The Stipulation and Settlement Agreement provides for, among other things, a prompt refund of \$24,000,000 to Tampa Electric's retail customers in the form of a one-time credit to customers' bills with \$22.72 million of the total being refunded to non-IS customer classes and the remaining \$1.28 million being refunded to the IS customer class. The Stipulation and Settlement Agreement also calls for a \$1.28 million annual reduction in revenues from the IS class of customers compared to the IS rates currently in effect. Other key aspects of the Stipulation and Settlement Agreement include the dismissal with prejudice of the pending appeal in the Supreme Court of Florida and the closure of Dockets Nos. 080317-EI and 090368-EI.

4. The Joint Movants represent that the Stipulation and Settlement Agreement fairly and reasonably balances the various positions of the Parties on issues in these proceedings and serves the best interests of the customers they represent and the public interest in general. The Stipulation and Settlement Agreement is fully consistent with and supportive of this Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the ratepayers of utilities subject to the Commission's regulatory jurisdiction and avoids the need for costly and time consuming litigation of matters before the Commission. For these reasons, the Joint Movants request that the Commission approve the Stipulation and Settlement Agreement attached to this Motion.

5. The Joint Movants ask that the Commission undertake its review of the Stipulation and Settlement Agreement and act upon this Joint Motion for its approval at its earliest possible Agenda Conference in order to allow for the prompt and orderly implementation of the Agreement and to provide certainty to the parties and their respective constituents and customers with respect to the outcome of this proceeding and the pending appeal.


WHEREFORE, the Joint Movants respectfully request that the Commission approve the Stipulation and Settlement Agreement attached hereto as Exhibit "A".

DATED this 20<sup>th</sup> day of July 2010.

Respectfully submitted,

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**Tampa Electric Company**

By 

James D. Beasley

J. Jeffry Wahlen

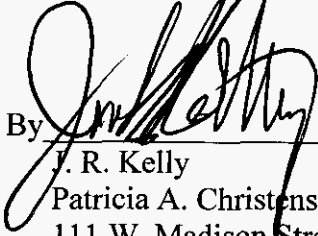
Ausley & McMullen

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**Office of Public Counsel**

By 

J. R. Kelly  
Patricia A. Christensen  
111 W. Madison Street, Room 812  
Tallahassee, Florida 32399-1400

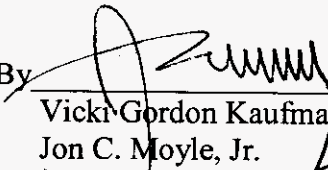
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**Office of the Attorney General**

By *Cecilia Bradley*  
Bill McCollum, Attorney General  
Cecilia Bradley  
Office of the Attorney General  
The Capitol – PL01  
Tallahassee, FL 32399-1050

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**Florida Industrial Power Users Group**

By   
Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Keefe Anchors Gordon & Moyle, P.A.  
118 North Gadsden Street  
Tallahassee, Florida 32301

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**Florida Retail Federation**

By 

Robert Scheffel Wright  
Young van Assendero, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Motion, filed on behalf of Tampa Electric, OPC, OAG, FIPUG and FRF, has been served by hand delivery (\*) or U. S. Mail on this 20<sup>th</sup> day of July, 2010 to the following:

Mr. Keino Young\*  
Staff Attorney  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. J. R. Kelley  
Ms. Patricia A. Christensen  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

Ms. Vicki Gordon Kaufman  
Mr. Jon C. Moyle, Jr.  
Keefe, Anchors, Gordon and Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301

Mr. John W. McWhirter, Jr.  
McWhirter & Davidson, P.A.  
Post Office Box 3350  
Tampa, FL 33601-3350

Mr. Robert Scheffel Wright  
Mr. John T. LaVia, III  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

Mr. Bill McCollum  
Ms. Cecilia Bradley  
Office of the Attorney General  
The Capitol – PL 01  
Tallahassee, FL 32399-1050

  
\_\_\_\_\_  
ATTORNEY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the continuing need and )  
cost associated with Tampa Electric )  
Company's 5 Combustion Turbines and )  
Big Bend Rail Facility. )  
\_\_\_\_\_ )

DOCKET NO. 090368-EI

**STIPULATION AND SETTLEMENT AGREEMENT**

WHEREAS, pursuant to its August 11, 2008 filing, Tampa Electric Company ("Tampa Electric" or "the company") petitioned the Florida Public Service Commission ("the Commission") for a permanent increase in its retail base rates and miscellaneous service charges; and

WHEREAS, the Commission on April 30, 2009 issued its Order No. PSC-09-0283-FOF-EI ("Order No. 09-0283") in Docket No. 080317-EI granting in part and denying in part Tampa Electric's petition for an increase in its rates and miscellaneous service charges; and

WHEREAS, portions of the relief granted in Order No. 09-0283 included the approval of a step increase, effective January 1, 2010, to enable Tampa Electric to recover its investment and expenses associated with five simple cycle combustion turbine generators ("5 CTs") and rail coal unloading facilities at Big Bend Station ("rail facility") that Tampa Electric was in the process of constructing during 2009, subject to conditions that these facilities would be completed and placed in service in 2009 and that the 5 CTs would continue to be needed for load generation; and

WHEREAS, the step increase approved for the 5 CTs and rail facility was reaffirmed in the Commission's order on reconsideration, Order No. PSC-09-0571-FOF-EI ("Order No. 09-0571"), issued August 21, 2009; and

WHEREAS, Office of Public Counsel ("OPC"), Office of the Attorney General ("OAG"), the Florida Industrial Power Users Group ("FIPUG") and the Florida Retail Federation ("FRF") appealed Orders Nos. 09-0283 and 09-0571 to the Supreme Court of Florida; and

WHEREAS, the Commission on July 15, 2009 opened Docket No. 090368-EI for the purpose of making a final determination as to whether the conditions imposed in Order No. 09-0283 for the step increase associated with Tampa Electric's 5 CTs and rail facility have been met; and

WHEREAS, OPC and FIPUG have intervened in Docket No. 090368-EI, and a hearing is scheduled for September 1 and 2, 2010; and

WHEREAS, Tampa Electric, OPC, OAG, FIPUG and FRF have agreed in principle to resolve all outstanding issues in the appeal of Order Nos. 09-0283 and 09-0571 pending in the Supreme Court of Florida, thereby enabling Docket No. 080317-EI to be closed, and resolving all issues in Docket No. 090368-EI pending before the Commission, and

WHEREAS, unless the context requires otherwise, the term Party or Parties means a signatory to this Stipulation and Settlement Agreement ("this Agreement"); and

WHEREAS, the Parties recognize that this is an unprecedented time in the Florida economy and that all Floridians have been affected by a protracted economic recession; and

WHEREAS, this Agreement will help to mitigate the impact of energy prices by, among other things, providing a significant refund to Tampa Electric's retail customers; and

WHEREAS, this Agreement will also allow Tampa Electric, its retail customers and all Parties to avoid significant costs and uncertainties associated with further litigation with respect to the appeal pending in the Supreme Court of Florida, in Docket No. 090368-EI and in any

other proceeding that might otherwise be required in order to address Tampa Electric's investment and expenses associated with the 5 CTs and rail facility; and

WHEREAS, the Parties have engaged in extensive and protracted efforts to resolve their differences both in the pending appeal and in Docket No. 090368-EI; and

WHEREAS, the Commission's approval of this Agreement will remove uncertainties for all Parties on a going-forward basis and at the same time provide significant economic benefits to Tampa Electric's retail customers.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the parties hereby agree and stipulate as follows:

1. Upon final approval of this Agreement, Tampa Electric will promptly refund a total of \$24,000,000.00 to its retail customers in the form of a one-time credit to customers' bills effected in the following manner. \$22.72 million of the total will be refunded to non-IS customer classes and the remaining \$1.28 million will be refunded to the interruptible service ("IS") customer class. Refunds will be applied only to active bills at the time the refunds are being made. Since the step increase was implemented with Cycle 1 billing for January 2010, the refund will also commence on Cycle 1 billing one month following the date the order regarding such refund becomes final and non-appealable. The refund mechanism will be based on an energy basis (cents per kWh) for all applicable customers. An energy cents per kWh refund mechanism requires the least amount of programming of the company's billing system and is an appropriate means with which to apply the refund comparable to how the charges were first applied. Any overpayment or underpayment of the one-time refund amount will be trued-up through the fuel and purchased power cost recovery clause.

2. The Parties agree that the tariff sheets filed by Tampa Electric in response to Order No. PSC-09-0842-PCO-EI (“Order No. 09-0842”) which were approved on December 7, 2009, are consistent with Order No. 09-0842 and should remain in effect on a permanent basis for all non-IS customer classes and for the remainder of 2010 for the IS customer class. The Parties further agree that, effective January 1, 2011, the rates applicable to IS customers should be adjusted to effect a \$1.28 million annual reduction in revenues from that class compared to the IS rates currently in effect, such annual reduction to remain in effect until the next change in base rates, and that the Commission should authorize its Staff to administratively approve new tariff sheets that properly reflect this change. This will have the effect of reducing the total step increase from \$25.7 million in 2010 to \$24.42 million per year in 2011 and subsequent years.

3. Final approval of this Agreement in its entirety will resolve all matters in the pending case styled Citizens of the State of Florida, Office of Public Counsel, et al., Appellants v. Matthew M. Carter II, etc., et al., Appellees, on appeal in the Supreme Court of Florida, Case No. SC09-1723, and all matters in Docket No. 090368-EI, pursuant to and in accordance with Section 120.57(4), Florida Statutes (2009). Upon final approval of this settlement agreement in its entirety by the Commission, OPC, OAG, FIPUG and FRF will dismiss with prejudice their appeal currently pending in the Supreme Court of Florida, Case No. SC09-1723, thereby enabling Docket No. 080317-EI to be closed. Docket No. 090368-EI will be closed effective on the date the Commission's order approving this Agreement becomes final and no Party shall seek appellate review of any order issued in that docket.

#### **General Provisions**

4. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission. The Parties further agree that they will support this Agreement

and will not request or support any order, relief, outcome or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing or challenging the establishment, approval, adoption or implementation of this Agreement or the subject matter hereof.

5. The Parties shall support the approval of this Agreement by the Commission at the earliest possible time in order to facilitate the implementation of the refund provided for herein to Tampa Electric's retail customers. The Parties urge that the Commission take final agency action at the earliest possible time approving this Agreement.


6. In the event the Commission rejects or modifies this Agreement, in whole or in part, the Parties agree this Agreement is void unless ratified by the Parties, and that each Party may pursue its interests as those interests exist, and no Party will be bound by or make reference to this Agreement before this Commission, any court, any other administrative form or arbitration panel.

7. This Agreement dated as of July 10, 2010 may be executed in counterpart originals, and a facsimile of the original signature shall be deemed an original.

IN WITNESS WHEREOF, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signatures below.

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**Tampa Electric Company**

By 

James D. Beasley

J. Jeffry Wahlen

Ausley & McMullen

Post Office Box 391

Tallahassee, Florida 32302

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**Office of Public Counsel**

By \_\_\_\_\_

J. R. Kelly

Patricia A. Christensen

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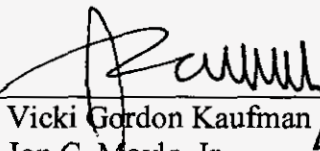
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**Office of the Attorney General**

By *Cecilia Bradley*  
Bill McCollum, Attorney General  
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