

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 090368-EI

REVIEW OF THE CONTINUING NEED
AND COSTS ASSOCIATED WITH TAMPA
ELECTRIC COMPANY'S 5 COMBUSTION
TURBINES AND BIG BEND RAIL
FACILITY.



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 5

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ

DATE: Tuesday, August 17, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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P R O C E E D I N G S

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2 **COMMISSIONER SKOP:** And if staff could
3 please introduce Item 5.

4 **MS. CHASE:** Commissioners, my name is
5 JoAnn Chase. I'm with staff. Item 5 is staff's
6 recommendation regarding the proposed stipulation
7 filed by TECO, the Office of Public Counsel, the
8 Office of the Attorney General, Florida Industrial
9 Power Users Group, and the Florida Retail Federation
10 to resolve the issues pending regarding the step
11 increase which was granted by the Commission in
12 TECO's last rate case in 2009 and implemented in
13 this docket on a temporary basis subject to refund
14 pending the outcome of a hearing.

15 The major elements of the stipulation are
16 that TECO's retail customers will receive a one-time
17 refund of \$24 million. For the residential class,
18 this equates to a refund of approximately \$18.50 for
19 a customer using 1,000 kilowatt hours. The current
20 rates for all classes, except for the interruptible
21 service class, will remain in effect on a permanent
22 basis until the next change in base rates.

23 The rates of the interruptible customer
24 class will be reduced effective January 1st, 2011,
25 to reflect an annual reduction of 1.28 million in

1 revenue, and the intervenors will dismiss with
2 prejudice their appeal of the TECO rate case orders
3 which are currently pending at the Florida Supreme
4 Court relating to the issue of the step increase.

5 Staff believes the stipulation is a
6 reasonable resolution of the issues regarding the
7 step increase and should be approved. We are
8 available to answer any questions you might have,
9 and I believe the parties are here in order to also
10 respond to questions.

11 **COMMISSIONER SKOP:** Okay. And just for
12 the benefit of our new Commissioners, if the parties
13 could introduce themselves, and I'll look to the
14 bench for comment.

15 **MR. WAHLEN:** Good morning, Commissioners.
16 I'm Jeff Wahlen of the Ausley and McMullen law firm.
17 I'm hear on behalf of Tampa Electric Company. We
18 agree with the staff's conclusion that the
19 settlement agreement before you is in the public
20 interest and should be approved. The settlement
21 will provide direct benefits to Tampa Electric's
22 customers in the form of a significant refund on
23 their electric bills. It will also allow all of the
24 parties to avoid the uncertainty and costs of
25 further litigation.

1 The settlement was developed through
2 intense negotiations involving all the stakeholders
3 over an extended period of time. The fact that all
4 of the parties found it appropriate to enter into
5 the settlement agreement says a lot about the
6 fairness of its content.

7 Tampa Electric appreciates very much the
8 willingness of each of the parties to sit down
9 together and to discuss our differences and to come
10 to a mutually acceptable compromise. We support the
11 settlement reached by the parties and urge you to
12 approve it.

13 **COMMISSIONER SKOP:** Thank you.

14 Mr. Wright.

15 **MR. WRIGHT:** Thank you, Mr. Chairman.
16 Schef Wright representing the Florida Retail
17 Federation.

18 Like Tampa Electric and my other
19 colleagues, we also support the settlement and we
20 support the staff's recommendation. As Mr. Wahlen
21 said, they were pretty intense negotiations and we
22 feel that the result was a fair balancing of all
23 sides' interests and we would support the
24 recommendation and urge you to approve the
25 settlement. Thank you.

1 **COMMISSIONER SKOP:** Very well.

2 Public Counsel.

3 **MS. CHRISTENSEN:** Good morning. Patti

4 Christensen for the Office of Public Counsel.

5 And I want to echo what my colleagues have
6 said. We did some intense negotiations and we
7 believe that we have come with a fair result given
8 all of the facts and circumstances, and avoid the
9 cost of further litigation. So at this point we are
10 pleased with the results, and we are happy to
11 present the settlement to you.

12 **COMMISSIONER SKOP:** Very well.

13 Ms. Kaufman.

14 **MS. KAUFMAN:** Thank you, Commissioner
15 Skop. Vicki Gordon Kaufman. I'm here on behalf of
16 the Florida Industrial Power Users Group, a
17 signatory to the agreement.

18 And we echo the comments of my colleagues
19 to my right, and also Ms. Chase's comment that this
20 is a reasonable resolution of the issues in this
21 case. And we'll put the Tampa Electric rate case
22 finally behind us, including the hearing that was
23 scheduled, as well as the Florida Supreme Court
24 appeal. So we support the stipulation and
25 settlement, and we'd like to thank your staff for

1 getting this to you so quickly.

2 It took us awhile, as Mr. Wahlen
3 mentioned, but once we had it done staff moved very
4 quickly on it. And we want to thank the parties, as
5 well, for, as others have referenced, some very hard
6 work and a lot of meetings and conference calls to
7 get to the point where we could all reach an
8 agreement. And we commend the settlement to you and
9 hope that you will approve it. Thank you.

10 **COMMISSIONER SKOP:** Thank you, Ms.
11 Kaufman.

12 Questions from the bench? Commissioner
13 Edgar.

14 **COMMISSIONER EDGAR:** Thank you.

15 And thank you to the parties for your
16 statements and for your work to get us to this
17 point. As you all know, the Commission has
18 traditionally encouraged settlements, and at least
19 at a minimum settlement discussions as a way of
20 administrative efficiency and another tool in the
21 toolbox, so to speak, to try to balance interests,
22 and reach good conclusions, and help issues to move
23 forward. So I'm appreciative of all of that, and
24 your comments that each of you believe that it is in
25 the public interest to move forward in this manner.

1 A question to our legal staff. Does this
2 settlement proposal and its resolution of the issues
3 contained therein establish any precedent on a
4 go-forward basis?

5 **MR. YOUNG:** No, ma'am, it doesn't. It's a
6 settlement agreement that is presented before you.
7 It does not establish any kind of precedent going
8 forth.

9 **COMMISSIONER EDGAR:** Do the parties concur
10 with that analysis?

11 **MR. WAHLEN:** Yes, ma'am.

12 **COMMISSIONER EDGAR:** Mr. Wright?

13 **MR. WRIGHT:** Commissioner, the settlement
14 -- approval of the settlement, per se, does not
15 establish any precedent. Approving the settlement
16 will leave your final order from the rate case
17 intact, and that is what it is. It is not
18 inherently precedential, although it is persuasive
19 precedent because of the inherent nature of
20 ratemaking is prospective. Everybody can come in
21 and argue pretty much anything reasonable with
22 respect to any rate issue on a going-forward basis.

23 You know, the utility could argue step
24 increase, we could argue no step increase, and so
25 on. It will leave the order, your final order

1 intact as it was, but there is no precedent beyond
2 that.

3 **COMMISSIONER EDGAR:** Thank you.

4 Commissioner, and Commissioners, I'm pleased to
5 support the settlement and I look forward to making
6 that motion at the appropriate time.

7 **CHAIRMAN ARGENZIANO:** Mr. Chair.

8 **COMMISSIONER SKOP:** Yes, Chairman
9 Argenziano, you're recognized.

10 **CHAIRMAN ARGENZIANO:** Yes. While it's
11 long precedent in the PSC to --

12 **COMMISSIONER SKOP:** Chairman, can you hold
13 on for one second so we can get the volume up
14 higher, please.

15 **CHAIRMAN ARGENZIANO:** Sure.

16 (Pause.)

17 **COMMISSIONER SKOP:** Okay. Chairman,
18 you're recognized.

19 **CHAIRMAN ARGENZIANO:** Okay. While it has
20 been a longstanding precedent to, you know, hope
21 that parties can come to agreement, sometimes it
22 seems to me in my experience at the PSC that parties
23 seem to be -- and I'll use the phrase, and the only
24 phrase I think that everybody will understand, are
25 backed into a corner.

1 Sometimes a decision is made, such as a
2 step increase, that no one really wanted, or some
3 wanted, but others didn't. And for the sake -- it
4 comes down to just for the sake of not having to go
5 to further expense you have to fight, and claw, and
6 scratch for an agreement. And while sometimes
7 agreement is better and to save money is better, it
8 seems to me all too often sometimes certain parties
9 and whatever case it may be are backed into a corner
10 or really have no choice.

11 So, sometimes the settlements are not
12 really a good thing, they are just, I guess, what
13 parties are left with. And in my opinion, I don't
14 think they always work for the benefit of everyone.
15 Although I have to agree that it's great when
16 everybody can get together and come out with the
17 best they can get, but sometimes just hearing that
18 this is the best you are going to get really doesn't
19 cut the mustard for me. So I'm not that enthused
20 with the settlement.

21 **COMMISSIONER SKOP:** Thank you, Chairman.
22 Additional questions from the bench? Okay.

23 To staff, a question I had. At the end of
24 the staff recommendation, I believe on Page 6, staff
25 addresses the changes to the IS class and staff

1 comments on that. If staff could briefly explain
2 that, please.

3 **MS. CHASE:** Yes, Commissioner. The IS
4 class is going to receive a rate reduction effective
5 in January 1, and the amount of the revenue
6 reduction that they will experience is roughly what
7 their allocated portion of the step increase was.
8 So this has the effect of them, in essence, not
9 carrying any of the cost of this plant. That
10 certainly is a negative aspect to staff of the
11 settlement agreement; however, that amount will not
12 be recovered from the remainder of the ratepayers.
13 That is something that the company will absorb in
14 the sense of they are not charging it to the other
15 ratepayers.

16 It also is a small enough amount that we
17 don't believe it will cause the company to
18 underearn, so it is not going to have an effect of
19 having them come in for a rate case any sooner than
20 they otherwise would have. So we believe in the
21 general scheme of things, given the other benefits
22 to the stipulation, that it is reasonable.

23 **COMMISSIONER SKOP:** Okay. So with respect
24 to the adjustment that is being made to the IS class
25 of service rates, and that is because they have

1 interruptible service and are usually large
2 industrial customers, they're not going to be
3 required to absorb their portion of the step
4 increase and that will be a recurring issue, but
5 that portion will be absorbed by the company, not
6 offset or subsidized by other TECO ratepayers, is
7 that correct?

8 **MS. CHASE:** That's correct, Commissioner.
9 And I will add to Commissioner Edgar's point, that
10 is not precedent setting. That issue will still be
11 live in future rate cases.

12 **COMMISSIONER SKOP:** Okay. But to that
13 point, though, by leaving the order intact, I think
14 what is precedential is that the Commission under
15 the right circumstance does have the ability to
16 grant a step increase when it is warranted. I think
17 that is what is preserved, is that correct?

18 **MR. YOUNG:** Yes, sir, we believe it does.

19 **COMMISSIONER SKOP:** All right. Thank you.
20 All right. Just my comments on the proposed
21 settlement. I think it, you know, has some
22 positives. I think the positives outweigh any
23 negatives that staff has discussed. I mean,
24 certainly TECO ratepayers are getting a \$24 million
25 one-time refund to offset the first year of the step

1 increase while the plants go in service under the,
2 you know, United States Supreme Court precedent of
3 Bluefield and Hope. When a plant is placed in
4 service, the utility is legally entitled to recover
5 rates and costs for putting that plant in service
6 for the benefit of its ratepayers.

7 Again, to me, looking at the step
8 increase, again, there were reasons why I believe I
9 think the Commission went in that direction given
10 the certainty of cost and the certainty of the
11 timing. But, again, what resulted from that would
12 have been long protracted legal litigation, and I
13 think that this settlement is in a hope to provide a
14 win/win for TECO ratepayers. The industrial
15 customers would also avoid that protracted legal
16 fight and basically come up with the best possible
17 option.

18 So, with that said, recognizing its
19 limitations, I'm also in support of the staff
20 recommendation as to the proposed settlement. And
21 I'd like to thank the parties for trying to come to
22 consensus and reach agreement to avoid further
23 litigation on this issue.

24 Any other questions, Chairman Argenziano?
25 Any others from the bench? Okay. At this time if

1 we could please have a motion.

2 **COMMISSIONER GRAHAM:** Move staff.

3 **COMMISSIONER EDGAR:** Move staff, second,
4 whichever is most appropriate.

5 **COMMISSIONER SKOP:** We have a
6 recommendation to move approve the staff
7 recommendation on Issue 5, with a second. Is there
8 any discussion on the motion? Okay. Hearing none,
9 all in favor of the motion say aye.

10 (Vote taken.)

11 **COMMISSIONER SKOP:** All opposed?

12 **CHAIRMAN ARGENZIANO:** Aye.

13 **COMMISSIONER SKOP:** Okay. We have four in
14 favor, one against. The motion passes.

15 So, thank you. I thank the parties.

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STATE OF FLORIDA)
:
COUNTY OF LEON)
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 20th day of August, 2010.



JANE FAUROT, RPR
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