

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 001186-EI  
ORDER NO. PSC-00-2104-PAA-EI  
ISSUED: November 6, 2000

The following Commissioners participated in the disposition  
of this matter:

J. TERRY DEASON, Chairman  
E. LEON JACOBS, JR.  
LILA A. JABER  
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING REQUESTS TO RECOVER COSTS THROUGH THE  
ENVIRONMENTAL COST RECOVERY CLAUSE

I. BACKGROUND

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose substantial interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On August 18, 2000, TECO requested to recover the costs of two environmental programs through the Environmental Cost Recovery Clause (ECRC). The programs are: 1) the Particulate Emission Minimization and Monitoring Program (PM Program); and, 2) the Reduction of Nitrogen Oxide Emissions Program at Big Bend Units 1, 2 and 3 (NO<sub>x</sub> Emission Reduction Program). TECO also seeks to include the actual year 2000 expenditures for these programs in the company's 2000 true-up amounts in the ECRC. TECO states that both the PM Program costs and the NO<sub>x</sub> Program costs will be allocated to rate classes on an energy basis because the programs are Clean Air Act compliance activities.

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FPSC-RECORDS/REPORTING

The two programs are the result of settlement agreements that TECO entered into with the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (DEP). The history and content of the settlement agreements are described below.

The United States Department of Justice, on behalf of the EPA, filed a lawsuit against TECO, on November 3, 1999, alleging TECO violated the Prevention of Significant Deterioration (PSD) requirements at Part C of the Clean Air Act, 42 U.S.C. §§ 7470-7492. The EPA claimed that TECO was required to obtain a PSD permit and apply best available control technology (BACT) before proceeding with various power plant modifications which TECO completed between 1991 and 1996. The power plant modifications in question were replacements of boiler equipment such as steam drum internals, high temperature reheater, water wall, cyclone, and furnace floor.

DEP filed a lawsuit against TECO on December 7, 1999, which mirrored the EPA lawsuit. Shortly after DEP filed its lawsuit, TECO and DEP settled the suit by entering a Consent Final Judgment (CFJ). The CFJ became effective on December 16, 1999. The CFJ requires TECO to:

- ◆ Optimize the scrubber on Big Bend Station Units 1&2 to achieve 95% sulfur removal efficiency beginning year 2000.
- ◆ Maximize the availability of both scrubbers at Big Bend Station beginning in year 2000.
- ◆ Repower Gannon Station with natural gas by December 31, 2004.
- ◆ Install Selective Catalytic Reduction technology on the repowered Gannon units to achieve an emission rate for nitrogen oxides (NO<sub>x</sub>) of 3.5 parts per million by December 31, 2004.
- ◆ Install retrofit NO<sub>x</sub> controls, repower or shut down Big Bend Units 1&2 by the year 2007.
- ◆ Install retrofit NO<sub>x</sub> controls, repower or shut down Big Bend Units 3&4 by the year 2010.
- ◆ Spend up to \$8 million to control NO<sub>x</sub> emissions with non-ammonia control technology or other combustion controls by December 31, 2004.

- ◆ Perform Best Available Control Technology analysis and optimization of the Big Bend Station electro-static precipitators by the year 2003.
- ◆ Install continuous emission measuring equipment for particulate matter on one Big Bend stack by May 1, 2003.
- ◆ Pay \$2 million into the Tampa Bay Estuary (BRACE) program by year end 2002.
- ◆ Not sell NO<sub>x</sub> emission allowances if such allowances are established by state or federal law.

The EPA lawsuit remained unresolved even though TECO and DEP settled. TECO continued negotiations with the EPA to resolve the EPA's concerns. On February 29, 2000, TECO and the EPA signed a settlement agreement (Consent Decree). The Consent Decree was filed with the U.S. District Court in Tampa on February 29, 2000. The notice of the Consent Decree was published in the Federal Register on March 20, 2000, Volume 65, No.54. The Consent Decree was entered on October 5, 2000.

The Consent Decree includes the requirements of the CFJ, but modifies some of the CFJ compliance dates, provides more explicit instructions than the CFJ and goes beyond the CFJ in three areas. The three additional requirements of the Consent Decree are: a) TECO is prohibited from banking or selling SO<sub>2</sub> emission allowances; b) TECO is required to pay a one-time civil penalty of \$3.5 million; and, c) TECO is required to spend up to \$9 million on innovative or other combustion controls to reduce NO<sub>x</sub> emissions at the Big Bend Station.

Jurisdiction over the subject matter of this petition is vested in the Commission by Section 366.8255, Florida Statutes. Order No. PSC-94-0044-FOF-EI, issued January 12, 1994 in Docket No. 930613-EI, sets forth the criteria the Commission uses to administer Section 366.8255, Florida Statutes. Under the Commission's interpretation of the statute, the Commission must first determine whether the project is eligible for recovery through the ECRC before cost recovery occurs. The Commission also set filing requirements for each petition for new ECRC programs by Order No. PSC-99-2513-FOF-EI, issued December 22, 1999, in Docket No. 990007-EI. Therefore, pursuant to Order No. PSC-94-0044-FOF-EI, Order No. PSC-99-2513-FOF-EI, and Section 366.8255, Florida

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Statutes, the instant docket was opened to address the eligibility of TECO's PM Program and NO<sub>x</sub> Program for recovery through the ECRC.

The criteria used by the Commission to determine if costs are recoverable through the ECRC are in Order No. PSC-94-0044-FOF-EI, as follows:

1. Costs were prudently incurred after April 13, 1993;
2. The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based; and,
3. Costs are not recovered through some other cost recovery mechanism or through base rates. (p. 6-7)

Order No. PSC-99-2513-FOF-EI, issued December, 22, 1999, in Docket 990007-EI, incorporated the three ECRC criteria identified above into minimum filing requirements for approval of recovery of new program costs through the ECRC. The minimum filing requirements for an ECRC petition are:

1. Identification of the specific environmental law(s) or regulation(s) requiring the proposed activity or project;
2. A description of the proposed environmental compliance activity;
3. The associated projected environmental compliance costs; and,
4. An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing. (p. 6)

The eligibility of the PM Monitoring Program for cost recovery through the ECRC is addressed in Part II. of this Order. The eligibility of the NO<sub>x</sub> Emission Reduction Program for cost recovery through the ECRC is addressed in Part III. of this Order. petition related to cost recovery schedules and rate impacts.

II. PM MONITORING PROGRAM

**(1) Identification of the specific environmental law(s) or regulation(s) requiring the proposed activity or project**

TECO's petition identifies the PM Program as a specific requirement of the CFJ at Section V.(F) and a specific requirement of the Consent Decree at Paragraph 32.

Paragraph 32(A) of the Consent Decree requires TECO to provide the EPA with a Best Operational Practices (BOP) study to reduce particulate matter emissions at the Big Bend Station. The BOP study must be completed within 12 months of the entry of the Consent Decree. The BOP study will only address operation and maintenance practices to minimize particulate emissions from the existing electrostatic precipitators at Big Bend Station. TECO will have 60 days to implement any changes recommended by the BOP study after the EPA approves TECO's study.

The Consent Decree, at Paragraph 32(B), also requires a BACT analysis addressing any necessary upgrades to the existing electrostatic precipitators at the Big Bend Station to reduce PM emissions. This analysis must be completed within 12 months of the entry of the Consent Decree. The EPA will review TECO's BACT analysis for approval. TECO must implement the recommendations made by the EPA approved BACT analysis by May 1, 2004.

TECO's settlement with the DEP similarly requires TECO to perform a BOP study and a BACT analysis. Section V.(F) of the CFJ requires TECO to implement the BOP study and BACT analysis recommendations by May 1, 2003. The DEP's compliance dates are one year earlier than the EPA's. TECO is planning to meet the more conservative compliance date of May 1, 2003.

Upon consideration of the above, we find that TECO's petition satisfies the minimum filing requirement to identify the specific law requiring TECO to implement the PM Program. In addition, TECO's PM project satisfies the ECRC criterion that the proposed activity was legally required after April 13, 1993.

**(2) Description of the proposed environmental compliance activity**

The PM Program consists of a BOP study and a BACT analysis. TECO's petition explains that both efforts are directed at improving the availability and efficiency of the existing electrostatic precipitators in removal of dust-sized particles from the flue gases at Big Bend Station. The BOP study will highlight operational changes that will reduce PM emissions while the BACT analysis will focus on upgrading the existing precipitators to further reduce PM emissions. TECO's petition indicates that a second BOP study is expected once the precipitator upgrades recommended by the BACT analysis are completed. However, at this time, TECO is only requesting recovery of the costs for the first BOP study, BOP study implementation, and BACT analysis.

Based on the foregoing analysis, we find that TECO's petition adequately describes the proposed environmental compliance activities as required by the minimum filing requirements. Based on TECO's representation of its actions taken to date, TECO has been prudent with respect to the program.

**(3) The associated projected environmental compliance costs**

The projected cost for the BOP study is \$125,000. The BOP study is a projected operating and maintenance (O&M) expense for Calendar Year 2000. The BOP study will be performed by the Electric Power Research Institute and the Southern Research Institute. TECO included an estimated cost to implement the BOP study of \$650,000 in O&M expenses and \$105,000 for capital expenditures to be incurred between August 2000 and December 2001.

The BACT analysis will take longer than the BOP study because a BACT analysis often requires inspection of the electrostatic precipitators, and such inspections can only be performed during power plant outages. At this time, TECO's BACT analysis cost estimate only includes efforts at Big Bend Units 1 and 2. BACT analysis at Big Bend Unit 1 is scheduled to begin in November 2000, and at Big Bend Unit 2 in April 2001. The estimated cost for BACT analysis on Big Bend Units 1 and 2 is \$1,325,000 to be incurred between August 2000 and December 2001. The BACT analysis costs will not be expensed, but capitalized. This is a standard practice when engineering analysis efforts directly precede equipment upgrades or replacements.

Based on the foregoing analysis, we find that TECO's petition adequately describes the projected environmental compliance costs as required by the ECRC filing requirements.

- (4) An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing**

The purpose of this ECRC criterion is to ensure that the environmental compliance costs are incremental to those used in setting current base rates.

TECO's current base rates were set in Docket No. 920324-EI. That rate case addressed the cost of operating and maintaining the existing electrostatic precipitators at their current level of performance. The requirement to implement the PM Program did not exist when TECO's base rates were last set. Therefore, the PM Program costs were not considered when TECO's base rates were set.

No adjustment for the level of costs currently being recovered through base rates was included in TECO's petition, however, no adjustment is necessary.

Based on TECO's explanation of the PM Program, we find that this activity is legally required to comply with a governmentally imposed environmental regulation which became effective after the last test year upon which current rates are based.

- (5) Cost recovery schedules**

TECO proposes to allocate the cost of the PM Program to the rate classes on an energy basis because TECO believes the program is a Clean Air Act compliance activity. It was determined in 1994 that costs for Clean Air Act compliance activities should be allocated to rate classes on an energy basis. This has been Commission practice since the guidelines were established in Order No. PSC-94-0393-FOF-EI, issued April 6, 1994, in Docket No. 940042-EI. Such program implementation issues are typically addressed in the ongoing ECRC proceedings. Therefore, it is not necessary to decide this issue at this time.

- (6) Conclusions**

Based on the foregoing review of TECO's PM Program, application of the ECRC criteria to TECO's PM Program, and the filing requirements for petitioning for recovery of new projects through the ECRC, we find the PM Program eligible for cost recovery through the ECRC.

### III. NO<sub>x</sub> EMISSION REDUCTION PROGRAM

#### **(1) Identification of the specific environmental law(s) or regulation(s) requiring the proposed activity or project**

TECO's petition identifies several NO<sub>x</sub> emission reduction related activities required by the DEP and the EPA. TECO clarified that, at this time, the only NO<sub>x</sub> activity cost for which it seeks recovery is the NO<sub>x</sub> emission reduction program at Big Bend Units 1, 2 and 3. The Consent Decree requires that "on or before December 31, 2001, Tampa Electric shall submit to the EPA for review and comment a plan to reduce NO<sub>x</sub> emissions from Big Bend Units 1, 2 and 3, through the expenditure of up to \$3 million Project Dollars on combustion optimization using commercially available methods, techniques, systems, or equipment, or combinations thereof." TECO is required to implement the plans on or before December 31, 2002.

We find TECO's NO<sub>x</sub> Emission Reduction Program at Big Bend Units 1, 2 and 3 satisfies the ECRC criteria that the proposed activity was legally required after April 13, 1993. TECO's petition satisfies the minimum filing requirement to identify the specific law requiring TECO to implement the NO<sub>x</sub> Emission Reduction Program.

#### **(2) Description of the proposed environmental compliance activity**

TECO explains that the NO<sub>x</sub> Emission Reduction Program consists of two activities. One activity is installation of a neural network system on Big Bend Units 1 and 2. The proposed neural network system is a computerized expert system which will aid NO<sub>x</sub> reduction by providing real-time optimization of the coal combustion process inside the boiler. The second activity consists of enhancements to other boiler internal components to reduce NO<sub>x</sub> emissions from Big Bend Units 1, 2, and 3. Boiler enhancement activities on Big Bend Units 1 and 2 are projected to be completed by September 2001. These activities are projected to



achieve at least a 30% NO<sub>x</sub> emission reduction at Big Bend Units 1 and 2 and at least a 15% NO<sub>x</sub> emission reduction at Big Bend Unit 3 based on 1998 emissions data. The Consent Decree requires TECO to implement these activities on or before December 31, 2002.

Based on the foregoing analysis, we find that TECO's petition adequately describes the proposed environmental compliance activities as required by the minimum filing requirements. Based on TECO's representation of its actions taken to date, we believe TECO has been prudent with respect to the program.

**(3) The associated projected environmental compliance costs**

The projected cost for the neural network systems on Big Bend Units 1 and 2 is \$465,000. TECO anticipates soliciting bids for key elements of the expert system, however, TECO's staff will perform much of the engineering. The projected costs for enhancements to the boilers' internal components of Big Bend Units 1 and 2 are \$590,000 in capital and \$50,000 in O&M expenses for boiler tuning. Performing similar retrofits on the Big Bend Unit 3 boiler internals will cost approximately \$300,000.

TECO's petition only addresses the NO<sub>x</sub> emission reductions activities at Big Bend Units 1, 2 and 3 pursuant to Paragraph 35 of the Consent Decree as outlined above.

Based on the foregoing analysis, we find that TECO's petition adequately describes the projected environmental compliance costs as required by the minimum filing requirements.

**(4) An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing**

The purpose of this ECRC criterion is to ensure that the environmental compliance costs are incremental to those used in setting current base rates.

TECO's current base rates were set in Docket No. 920324-EI. The 1992 rate case did not address the cost of the proposed neural network system and the proposed boiler internal modifications. The requirements to implement the NO<sub>x</sub> Program began in Calendar Year

2000. Therefore, the NO<sub>x</sub> Emission Reduction Program costs were not considered when TECO's base rates were set.

No adjustment for the level of costs currently being recovered through base rates was included in TECO's petition, however, no adjustment is necessary.

Based on TECO's explanation of the NO<sub>x</sub> Emission Reduction Program, this activity is legally required to comply with a governmentally imposed environmental regulation which became effective after the last test year upon which current rates are based.

**(5) Cost recovery schedules**

Paragraph 22 of TECO's Petition states that TECO proposes to allocate the cost of the NO<sub>x</sub> Emission Reduction Program to the rate classes on an energy basis because TECO believes the program is a Clean Air Act compliance activity. It was determined in 1994 that costs for Clean Act Compliance Activities should be allocated to rate classes on an energy basis. This has been Commission practice since the guidelines were established in Order No. PSC-94-0393-FOF-EI, issued April 6, 1994, in Docket No. 940042-EI. Such program implementation issues are typically addressed in the ongoing ECRC proceedings. Therefore, it is not necessary to decided this issue at this time.

**(6) Conclusions**

Based on the foregoing review of TECO's NO<sub>x</sub> Emission Reduction Program, application of the ECRC criteria to the Program, and the filing requirements for petitioning for recovery of new projects through the ECRC, we find that the NO<sub>x</sub> Emission Reduction Program is eligible for cost recovery through the ECRC.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition of Tampa Electric Company for Approval of New Environmental Programs for Cost Recovery Through the Environmental Cost Recovery Clause is granted. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 6th day of November, 2000.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn

Kay Flynn, Chief  
Bureau of Records

( S E A L )

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.