

BEFORE 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. 060583-EI  
ORDER NO. PSC-06-0926-PAA-EI  
ISSUED: November 6, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING ENVIRONMENTAL PROGRAM FOR COST RECOVERY

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 interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On August 30, 2006, Tampa Electric Company (TECO) filed its petition for approval for cost recovery through the Environmental Cost Recovery Clause (ECRC) of its environmental program to comply with the Clean Air Mercury Rule (CAMR). CAMR was promulgated by the Environmental Protection Agency (EPA) on May 18, 2005, and became effective on July 18, 2005. It imposes nation-wide standards for mercury (Hg) emissions from existing and new coal-fired electric utility steam generating units. CAMR will cap and reduce mercury emissions in two phases: the Phase I cap is 38 tons per year with a compliance date of 2010, and the Phase II cap is 15 tons per year with a compliance date of 2018. CAMR also requires that continuous emissions monitoring systems (CEMS) be installed on all coal fired units by January 1, 2009, one year prior to implementation of the Phase I caps. The Florida Department of Environmental Protection will administer CAMR as delineated in Rules 62-204, 62-210 and 62-296, Florida Administrative Code. DEP's new rules implementing CAMR were certified on August 17, 2006.

Section 366.8255, Florida Statutes, authorizes the Commission to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. Section 366.8255(1)(d) provides that:

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‘Environmental compliance costs’ includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations. . . .

Section 366.8255(1)(c) provides that:

‘Environmental laws or regulations’ includes all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment.

Section 366.8255(2) provides that:

An electric utility may submit to the commission a petition describing the utility’s proposed environmental compliance activities and projected environmental compliance costs in addition to any Clean Air Act compliance activities and costs shown in a utility’s filing under s. 366.825. If approved, the commission shall allow recovery of the utility’s prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof, through an environmental compliance cost-recovery factor that is separate and apart from the utility’s base rates. An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing.

As explained in detail below, we find that TECO’s proposed Clean Air Mercury Rule Phase I emission monitoring compliance program is eligible for cost recovery through the ECRC. The projected and actual costs of the program will be considered in the yearly ECRC proceedings. We have jurisdiction pursuant to the statute cited above.

## DECISION

### The Company’s Proposed Project

Based upon the Clean Air Mercury Rule, TECO must install CEMS or sorbent trap monitoring systems at its Big Bend Units 1 through 4 and Polk Unit 1 to sample mercury levels in the flue gas by January 1, 2009. These requirements are contained in Rule 62-296.480 (3)(g), Florida Administrative Code, which refers to the Environmental Protection Agency Rules, 40 CFR 60.4170 through 4176.

Prior to installing CEMS and sorbent trap monitoring systems, TECO will perform baseline testing to measure actual mercury emissions at each affected plant. Baseline testing will allow the Company to measure mercury emissions and gather data to ensure that the new monitoring instruments are designed for the proper monitoring range. Further, 40 CFR 75.81(b) provides that units which annually emit less than 464 ounces will be allowed to use periodic

instead of continuous monitoring for mercury emissions. TECO anticipates being able to use sorbent trap systems on two units based upon the results of baseline testing.

TECO will begin incurring expenses for baseline testing in late 2006 and incur mercury monitoring costs through 2010. Through this monitoring, TECO can certify to EPA accurate emission levels that will determine if additional compliance activities will be needed to comply with Phase I of CAMR. The costs in the table below are preliminary estimates. Our staff will audit actual costs to true-up original projections and to verify the prudence of the individual cost components included for recovery. TECO has stated it will seek cost recovery of the 2006 baseline testing costs in its 2006 true-up filing. Costs for 2007 are included for recovery purposes in TECO's projection filing in Docket No. 060007-EI.

**PROJECTED CAMR PHASE I MONITORING COSTS**

COMPONENTS	2006	2007	2008	2009	2010	TOTALS
CEMs/Sorbent Trap Systems			\$850,000			\$850,000
Baseline Testing	\$46,000	\$100,000	\$50,000			\$196,000
Monitoring Site (monitoring trailer and portable monitoring system)		\$300,000				\$300,000
Monitoring Equipment (equipment, software and certification)		\$110,000	\$280,000			\$390,000
Vendor Consultation		\$50,000	\$50,000	\$25,000		\$125,000
<u>Total Capital</u>	\$46,000	\$560,000	\$1,230,000	\$25,000		\$1,861,000
<u>Operation and Maintenance</u>			\$75,000	\$355,000	305,000	\$735,000
<u>Total Estimated Project Cost</u>	\$46,000	\$560,000	\$1,305,000	\$380,000	\$305,000	\$2,596,000

Eligibility For Cost Recovery Through The ECRC

As stated above, Section 366.8255, Florida Statutes, authorizes the Commission to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. Environmental compliance costs include ". . . all costs or expenses incurred by an electric utility in complying with environmental laws or regulations. . . ." Section 366.8255(1)(d), Florida Statutes. Environmental laws or regulations include "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment." Section 366.8255(1)(c), Florida Statutes. Only prudently incurred environmental compliance costs may be recovered through the clause.

In Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In Re: Petition to establish an environmental cost recovery clause pursuant to Section 36.8255, Florida Statutes by Gulf Power Company, the Commission identified three criteria for eligibility for cost recovery through the ECRC: 1) the costs must have been incurred after April 13, 1993; 2) the activity is legally required to comply with a governmentally imposed environmental regulation which was enacted, or became effective, or whose effect was triggered after the company's last test year upon which rates are based, and; 3) the costs are not recovered through some other cost recovery mechanism or through base rates.

We find that TECO's Phase I compliance program meets the eligibility criteria stated above. As previously stated CAMR requires mercury monitoring systems to be in place by January 1, 2009. These requirements are contained in Rule 62-296.480(3)(g), Florida Administrative Code, which refers to the EPA rule (40 CFR 60.4170 through 4176). TECO is undertaking this project to comply with environmental rules and regulations finalized in August 2006, and thus costs to comply with this new rule will be incurred after 1993. TECO's current base rates were established by Order No. PSC-93-0758-FOF-EI, issued May 19, 1993, in Docket No. 920324-EI, In Re: Application for a rate increase by Tampa Electric Company. Since CAMR was promulgated in 2005, costs associated with mercury monitoring are not included in base rates or any other cost recovery clause.

Other cost recovery matters

CAIR and CAMR are established pursuant to the Clean Air Act. Our policy regarding how to allocate costs to the rate classes due to Clean Air Act compliance activities was established by Order No. PSC-94-0044-FOF-EI. In that docket, the Commission ordered that costs associated with compliance with the Clean Air Act Amendments of 1990 ("CAAA") be allocated to the rate classes in the ECRC on an energy basis, due to the strong nexus between the level of emissions which the CAAA seeks to reduce and the number of kilowatt-hours generated. In every subsequent order approving recovery of CAAA costs through the ECRC, other than decisions affected by stipulations, the Commission has required that the costs be allocated to the rate classes on an energy basis. Because the costs for which TECO is seeking recovery in this docket are also related to Clean Air Act compliance, we find that an energy allocation is appropriate.

The depreciation rates used to calculate the depreciation expense for the proposed plant additions should be the rates that are in effect during the period the capital investment is in service.

Conclusion

We conclude that TECO must comply with the CAMR monitoring requirements, the costs will be incurred after 1993 and the monitoring costs are not being recovered through base rates or another cost recovery clause. Therefore, we find that the CAMR Phase I mercury monitoring program is eligible for cost recovery through the ECRC. We also find that TECO's request to recover the costs on an energy basis is appropriate.

Based on the foregoing, it is

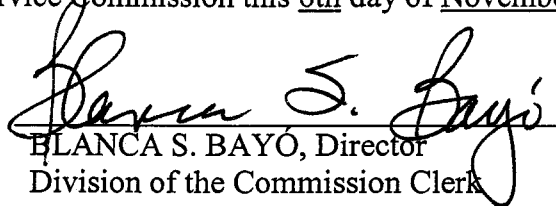
ORDERED by the Florida Public Service Commission that Tampa Electric Company's proposed Clean Air Mercury Rule Phase I emission monitoring compliance program is eligible for cost recovery through the Environmental Cost Recovery Clause. It is further

ORDERED that Tampa Electric Company shall recover the costs of the program on an energy basis. It is further

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 the Commission Clerk and Administrative Services, 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, 2006.

  
BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

(SEAL)

MCB

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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2006.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.