

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. 050958-EI
ORDER NO. PSC-07-0173-PHO-EI
ISSUED: February 23, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, F.A.C., a Prehearing Conference was held on February 22, 2007, in Tallahassee, Florida, before Commissioner Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

LEE L. WILLIS, ESQUIRE, and JAMES D. BEASLEY, ESQUIRE Ausley & McMullen, P. O. Box 391, Tallahassee, FL 32302
On behalf of Tampa Electric Company (TECO).

PATRICIA A. CHRISTENSEN, ESQUIRE, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

MARTHA CARTER BROWN, ESQUIRE, and KEINO YOUNG, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

On December 27, 2005, Tampa Electric Company (TECO or Tampa Electric or company) petitioned for cost recovery through the Environmental Cost Recovery Clause (ECRC) of the costs associated with a project titled "Big Bend Flue Gas Desulfurization System Reliability Program" (FGD System Reliability Program) for improved reliability of the flue gas desulfurization systems (scrubbers) on Big Bend Units 1, 2, and 3. TECO asserted that the program was designed to comply with its Consent Decree with the Department of Environmental Protection, which provides that TECO cannot run those baseload coal plants without scrubbers after 2010 and 2014. The Commission approved the proposed project for recovery through the Environmental Cost Recovery Clause (ECRC) by Order No. PSC-06-0602-PAA-EI, issued July 10, 2006. Thereafter, on July 21, 2006, the Office of Public Counsel (OPC) filed a Petition on Proposed Agency Action objecting to the Commission's PAA order and requesting a formal

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administrative hearing on the matter. Accordingly, a hearing has been scheduled for March 5, 2007.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Section 403.537, F.S. This hearing will be governed by that statute, Chapter 120, F.S., and Rules 25-22.075 and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to two minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Howard T. Bryant	TECO	1, 2
Gregory M. Nelson ¹	TECO	1, 2
John V. Smolenski	TECO	1, 2

¹ Tampa Electric witness Laura R. Crouch will adopt the testimony submitted by Mr. Nelson.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Patricia W. Merchant	OPC	1, 2
Thomas A. Hewson, Jr.	OPC	1, 2
John B. Stamberg	OPC	1, 2
<u>Rebuttal</u>		
Howard T. Bryant	TECO	1, 2
Laura R. Crouch	TECO	1, 2
John V. Smolenski	TECO	1, 2

VII. BASIC POSITIONS

TECO: The Commission should approve each of the thirteen projects that make up the Tampa Electric Company FGD System Reliability Program for recovery in the manner described in Tampa Electric's positions on Issues 1 and 2 of this Prehearing Statement.

OPC: Four of the Big Bend FGD System Reliability Program projects are not eligible for recovery through the ECRC. For a project to be eligible for recovery through the special environmental cost recovery, the project must be required to comply with an environmental law or regulation. The proposed electric isolation project, split inlet and outlet duct projects, and the gypsum fines filter project are not necessary or required to comply with Paragraph 40 of the Consent Decree, nor any other environmental law or regulation, and therefore are not eligible for recovery through the ECRC clause.

Section 366.8255, Florida Statutes, provides that electric utilities may petition the Commission for all of its prudently incurred costs that are necessary and required for complying with environmental laws or regulations for recovery through the ECRC. However, all costs recovered through base rates or other recovery mechanisms are required to be excluded from recovery through the ECRC clause. Under the current scheme, utilities have an incentive to roll as many costs as possible through cost recovery clauses, to avoid the necessity of absorbing those costs through base rates between rate cases.

Moreover, just because a cost may be environmentally related does not automatically qualify it for recovery through the cost recovery clause. Nor does the desirability of a project, which is not required, make that project eligible for ECRC recovery. As noted by the Commission in Order No. PSC-94-0044-FOF-

EI, issued January 12, 1994, projects, which may be warranted and even desirable for other reasons but which are not necessary to comply with any governmentally imposed environmental compliance mandate, cannot be passed through in the ECRC clause. *Id.* at page 8. In other words, environmental projects which are discretionary in nature – not required to meet an environmental law or regulation – are not recoverable through the ECRC even if they would otherwise be recoverable through base rates.

TECO claimed that these four projects (electric isolation, split inlet and outlet ducts, and gypsum fines filter) were necessary to meet Paragraph 40 of the Consent Decree (CD). Paragraph 40 of the CD provides that the Big Bend Units 1- 3 may not run unscrubbed after January 1, 2010 (for Unit 3) and January 13, 2013 (Units 1 and 2).² Paragraph 40 does not address FGD system reliability, although TECO was required to identify projects which would improve reliability in its Phase I and Phase II Flue Gas Desulfurization (FGD) plans to the EPA.

Even in its Quarterly reports to the EPA regarding its compliance with the CD, TECO has placed these four projects under the modifications to the Big Bend units that are not required by the CD. Neither were these projects identified in TECO's Phase I or Phase II FGD plans for the Big Bend units, which identified projects necessary to comply with the CD. Simply stated, TECO does not need to make any of these four project modifications to run its current FGD systems in compliance with the current environmental laws or regulations.

The electric isolation projects for Units 1-4 are to provide a new transformer to power new Induced Draft (ID) fans. These ID fans are part of the boiler system and are only tangentially related to any environmental piece of equipment. Since the current transformer system has historically been highly reliable, the proposed transformer project will have no measurable effect on the reliability of the FGD system.

The split inlet duct and outlet duct projects are not necessary to meet an environmental law or requirement as evidenced by TECO's original election to combine the Unit 3-4 inlet duct and outlet duct into one scrubber to reduce the environmental compliance costs. While the split duct projects are being done on environmental equipment, the modifications are purely discretionary in nature and have no substantive impact on the system reliability.

Finally, the gypsum fines filter project is a revamping of the gypsum disposal system to make a saleable byproduct and reduce landfill costs. However, the proposed modification is unnecessary for the operation of existing system, thus is discretionary in nature and not recoverable through the ECRC.

² Big Bend Unit 4 currently is required to operate scrubbed at all times.

Because of the potential for abuse of the special mechanism, due to shifting costs which ought to be absorbed in base rates, vigilance is warranted to keep only those costs that are required to meet environmental laws or regulations flowing through the ECRC. Under close examination, none of the four disputed projects meets the strict statutory requirement necessary for special recovery under the ECRC.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

ISSUE 1: Are the following projects in Tampa Electric Company's Big Bend FGD System Reliability Program costs or expenses incurred by Tampa Electric in complying with environmental laws or regulations and, therefore, entitled to be recovered under the environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes?

(a) Big Bend Units 1-4 Electric Isolation

POSITIONS

TECO: Yes. Each of the projects listed under subissues (a) (b) and (c) of Issue 1 is necessary to comply with environmental laws and regulations and therefore are entitled to be recovered through the Environmental Cost Recovery Clause pursuant to Section 366.8255, Florida Statutes. (Witnesses: Bryant; Nelson (adopted by Crouch); Crouch and Smolenski)

OPC: The electric isolation project for Big Bend Units 1-4 is not eligible for recovery thorough the ECRC because it is not required to meet an environmental law or regulation. The main function of the proposed electric isolation project is to provide a new transformer for the Induced Draft fans serving the boiler system, which is not an environmental system.

STAFF: No position at this time.

(b) Big Bend Units 3-4 Split Inlet Duct and Split Outlet Duct

POSITIONS

TECO: Yes. Each of the projects listed under subissues (a) (b) and (c) of Issue 1 is necessary to comply with environmental laws and regulations and therefore are entitled to be recovered through the Environmental Cost Recovery Clause pursuant to Section 366.8255, Florida Statutes. (Witnesses: Bryant; Nelson (adopted by Crouch); Crouch and Smolenski)

OPC: The Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. The scrubber system's original combined duct system design - without the splitting of the inlet and outlet ducts – meets current environmental law. Thus, the split inlet duct and outlet duct projects are discretionary projects not entitled to special recovery treatment.

STAFF: No position at this time.

(c) Gypsum fines filter

POSITIONS

TECO: Yes. Each of the projects listed under subissues (a) (b) and (c) of Issue 1 is necessary to comply with environmental laws and regulations and therefore are entitled to be recovered through the Environmental Cost Recovery Clause pursuant to Section 366.8255, Florida Statutes. (Witnesses: Bryant; Nelson (adopted by Crouch); Crouch and Smolenski)

OPC: The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. The gypsum fines filter project is being done to make a saleable by-product and reduce landfill costs. As such, while commendable, the cost is not being incurred to comply with an environmental law or regulation.

STAFF: No position at this time.

ISSUE 2: How should the following remaining projects in Tampa Electric Company's Big Bend FGD System Reliability Program be recovered?

- (a) Big Bend Units 1-4 Mist Eliminator Upgrades
- (b) Big Bend Units 1-4 On-line Mist Eliminator Wash System
- (c) Big Bend Units 1-4 On-line Nozzle Wash System

- (d) Gypsum Filter Vacuum Pump Upgrades
- (e) Big Bend Units 1-2 Gypsum Blow Down Line
- (f) Controls Additions
- (g) Big Bend Units 3-4 FGD Booster Fan Capacity Expansion
- (h) Big Bend Units 1-2 Recycle Pump Discharge Isolation Bladders
- (i) Big Bend Units 1-2 Inlet Duct C-276 Wallpaper

**STIPULATED
 POSITION**

The costs of the projects listed under Issue 2 (which exclude electric isolation, split inlet duct and outlet duct, and gypsum fines filter projects) should be recovered through the Big Bend FGD System Reliability (New) ECRC Program, the Big Bend Units 1 and 2 FGD System Reliability (Existing) ECRC Program and through base rates, allocated among the three methods of recovery in the manner shown in the chart entitled "Big Bend Flue Gas Desulfurization System Reliability Program Recovery of Expenditures-Revised" filed on March 16, 2006 by Tampa Electric, a copy of which is attached hereto and by reference made a part hereof. The allowance or disallowance of costs for recovery through base rates is appropriately decided in a base rate proceeding.

(OPC specifically does not stipulate to the reasonableness or prudence of costs or expenses that are identified as recoverable through base rates or that are subsequently recovered through base rates since issues related to base rate recovery are outside the scope of this petition.)

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Gary M. Nelson ³	TECO	_____ (GMN-1)	Portions of Consent Decree and Declaratory Letter to EPA
John V. Smolenski	TECO	_____ (JVS-1)	Big Bend Station FGD Station Reliability Study

³ This exhibit will be adopted by Tampa Electric witness Laura R. Crouch.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(JVS-2)</u>	Rebuttal Documents of John V. Smolenski
Patricia W. Merchant	OPC	<u>(PWM-1)</u>	Curriculum Vitae
Thomas A. Hewson, Jr.	OPC	<u>(TAH-1)</u>	Resume of Thomas A. Hewson Jr.
		<u>(TAH-2)</u>	TECO Phase I Flue Gas Desulfurization Plan
		<u>(TAH -3)</u>	TECO Phase II Flue Gas Desulfurization Plan
		<u>(TAH-4)</u>	TECO Quarterly Report – 3 rd Quarter 2006 (Dated 10/27/06)
John B. Stamberg	OPC	<u>(JBS-1)</u>	Resume of John B. Stamberg, P.E.
		<u>(JBS-2)</u>	Load Descriptions of New Electric Isolation Project
		<u>(JBS-3)</u>	Comparative Group A Outage Rates
		<u>(JBS-4)</u>	Comparison of The Project Cost, Net Present Value of Capital Expenditures, NPV of Savings, Net Savings and Cost Benefit Ratio of TECO's Assumptions

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There is a proposed stipulation for Issue 2.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS


Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Commissioner Matthew M. Carter, II, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

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By ORDER of Commissioner Matthew M. Carter II, as Prehearing Officer, this 23rd
day of February, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, F.A.C.; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, F.A.C. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

TAMPA ELECTRIC COMPANY
 DOCKET NO. 050958-EI
 FILED: 12/27/05
 REVISED: 3/16/06

**Big Bend Flue Gas Desulfurization System Reliability Program
 Recovery of Expenditures - Revised**

<u>Projects</u>	<u>Big Bend FGD System Reliability (New ECRC Program)</u>	<u>Big Bend Units 1&2 FGD (Existing Program)</u>	<u>Base Rates</u>
Big Bend Units 3-4 Split Inlet Duct	\$116,000		
Big Bend Units 3-4 Split Outlet Duct	4,829,000		
Big Bend Units 1-4 Mist Eliminator Upgrades		\$1,610,000	\$777,000
Big Bend Units 1-4 On-line Mist Eliminator Wash System	334,500	334,500	
Big Bend Units 1-4 On-line Nozzle Wash System	280,500	280,500	
Gypsum Fines Filter	2,666,000		
Gypsum Filter Vacuum Pump Upgrades		623,000	
Big Bend Units 1-4 Electric Isolation	3,300,000	3,300,000	
Big Bend Units 1-2 Gypsum Blow Down Line		284,000	
Controls Additions	203,000	203,000	
Big Bend Units 3-4 FGD Booster Fan Capacity Expansion			1,849,000
Big Bend Units 1-2 Recycle Pump Discharge Isolation Bladders		227,000	
Big Bend Units 1-2 Inlet Duct C-276 Wallpaper		234,000	
Total:	\$11,929,000	\$7,096,000	\$2,626,000