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July 29, 1998

Ms Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE Docket No 980693-E1

Dear Ms Bayo

Enclosed is an original and fifteen copies each of the Citizens' Notice of Intervention and Suggestion that the Florida Public Service Commission, on its Own Motion, Dismiss Tampa Electric Company's Petition Without Prejudice for filing in the above-referenced docket

Also Enclosed is a 3 5 inch diskette containing the Suggestion that the Florida Public Service Commission, on its Own Motion, Dismiss Tampa Electric Company's Petition Without Prejudice in WordPerfect for Windows 6 1 format Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office Thank you for your assistance in this matter

Sincerely,

John Roger Howe  
Deputy Public Counsel

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JRH/dsb  
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric Company for approval of cost recovery for a new environmental program, the Big Bend Units 1 & 2 Flue Gas Desulfurization System

DOCKET NO 980693-EI

FILED July 29, 1998

**SUGGESTION THAT THE FLORIDA PUBLIC SERVICE COMMISSION, ON ITS OWN MOTION, DISMISS TAMPA ELECTRIC COMPANY'S PETITION WITHOUT PREJUDICE**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to Section 350.061(1), Florida Statutes (1997), suggest that the Florida Public Service Commission, on its own motion, dismiss Tampa Electric Company's petition filed May 15, 1998, without prejudice to allow for the filing of an appropriate petition which satisfies the requirements of Section 366.825, Florida Statutes (1997), and as grounds therefor, state:

1 The issue presented in this pleading is whether the Commission is authorized by Section 366.8255, Florida Statutes (1997), to evaluate, approve, and allow cost recovery for an electric utility's incomplete plan to achieve partial compliance with Phase II of the Clean Air Act Amendments of 1990 (CAAA) when the requirements of Section 366.825 have not first been satisfied. Tampa Electric recognized that a prudence review for its plan under the CAAA to reduce SO<sub>2</sub> emissions by scrubbing Big Bend Units 1 and 2 must be grounded in statute, invoking Section 366.8255 as authority for its petition. But that statute is not the vehicle for evaluating CAAA compliance plans, and it does not authorize the recovery of costs for a CAAA compliance plan which has not first satisfied the requirements of Section 366.825.

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FILED IN THE OFFICE OF THE CLERK

2. Section 366.825 was adopted in 1992 specifically to address electric utility costs associated with the CAAA and any related state and local legislation. This statute requires the Commission to consider specific information when approving compliance plans (subsection 366.825(2)) and to conduct a separate proceeding to determine the reasonableness of expenditures incurred pursuant to an approved plan (subsection 366.825(3)). Section 366.825 does not, however, provide for cost recovery.

3. Section 366.8255 was adopted one year later, in 1993. This statute does two things: (1) It allows for the Commission to evaluate government-mandated environmental compliance activities -- other than those required by the CAAA, and (2) It also allows for cost recovery through the environmental cost recovery clause for these non-CAAA activities as well as for actual costs incurred as a result of CAAA compliance plans considered and approved pursuant to Section 366.825. Subsection 366.8255(2) states, in pertinent part:

(2) 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.

[Emphasis added.]

4. Section 366.825 delineates the exclusive procedure for Commission consideration of electric utilities' plans for compliance with the CAAA. In many respects the statute is analogous to a declaratory statement proceeding. If a company is in substantial doubt whether its chosen method for CAAA compliance will be acceptable to the Commission, it "may" submit its plan for pre-

implementation review pursuant to subsection 366 8255(2) If it chooses to ask the Commission for guidance, however, the utility "must" submit the information the Commission is required to consider before approving the compliance plan.

(2) Each public utility which owns or operates at least one electric generating unit affected by s. 404 or s. 405 of the Clean Air Act may submit, for commission approval, a plan to bring generating units into compliance with the Clean Air Act. A plan to implement compliance submitted by public utilities must include, at a minimum

(a) The number and identity of affected generating units,

(b) A description of the proposed action, and alternative actions considered by the public utility, to reduce sulfur dioxide emissions to levels required by the Clean Air Act at each affected unit,

(c) A description of the proposed action, and alternative actions considered by the public utility, to comply with nitrogen oxide emission rates required by the Clean Air Act at each affected unit,

(d) Estimated effects of the public utility's proposed plan on the following

1 Requirements for construction and operation of proposed or alternative facilities,

2 Achievable emissions reductions and methods for monitoring emissions,

3 The public utility's proposed schedule for implements [sic] of compliance activities,

4 The estimated cost of implementation of the public utility's compliance plan to the utility's customers,

5 The public utility's present and potential sources of fuel, and

6 A statement of why the public utility's proposed compliance plan is reasonable and in the public interest

(e) A description of the proposed actions to comply with federal, state, and local requirements to implement the Clean Air Act

(3) The commission shall review a plan to implement the Clean Air Act compliance submitted by public utilities pursuant to this section in order to determine whether such plans, and any effect on rates resulting from such implementation are in the public interest . . . .

[Emphasis added ]

5 Tampa Electric's petition in this docket was not submitted pursuant to Section 366 825. In fact, that statute is not mentioned in Tampa Electric's petition. Tampa Electric's petition and prefiled testimony, therefore do not even pretend to satisfy the requirements of subsection 366 825(2). (Mr. Black's prefiled testimony, however, states incongruously, at page 3, that "[t]he purpose of this proceeding is to review the company's plan for compliance with Phase II [of the CAAA] ")

6 Much of the information required by Section 366 825 has not been submitted. The company has not, for example, provided a description of the method chosen to meet nitrogen oxide emission standards required by paragraph 366 825(2)(c). (At page 3 of the Compliance Plan, Tampa Electric acknowledges that it "does not address any specific plans for NOX reductions which may be required under the CAAA Phase II NOX requirements " [Hernandez, Exhibit No. (TLH-1), Document No. 2, p. 7 of 43]) The petition and prefiled direct testimony also fail to provide an estimate of the cost of implementation to the utility's customers as required by subparagraph 366 825(2)(d)4. Similarly, the present and potential future sources of fuel are not identified as is required by subparagraph 366 825(2)(d)5.

7 Tampa Electric claims, at page 4 of its petition, that the costs of its proposal are eligible for cost recovery "because they satisfy the three criteria identified in the policy the Commission established in [Order No. PSC-94-0044-FOF-EI] ". The three criteria cited, however,

are only determinative of whether the costs are prospective in nature, whether they are required by governmental action, and whether they are already being recovered through base rates or another recovery mechanism. The pivotal issue, however, is whether the company has provided the information the Legislature requires the Commission to consider when it evaluates CAAA compliance plans. The Commission cannot consider the three criteria from Order No. 94-0044 until it first determines that Section 366.825 has been satisfied.

8 Taking every statement and allegation in Tampa Electric's petition and prefiled testimony as true, the company has not provided the full range of information Section 366.825 requires the Commission to evaluate before approving a compliance plan under the CAAA. Tampa Electric has invoked the wrong statute and failed to file all the information the Legislature requires the Commission to consider under the correct statute. There is no claim for recovery of a CAAA Phase II compliance plan cognizable under Section 366.825 until the requirements of Section 366.825 have first been met. The Commission has no authority to approve a compliance plan which does not satisfy the requirements of Section 366.825 or to allow for recovery of its costs through an environmental cost recovery factor under Section 366.825.

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, move the Florida Public Service Commission, on its own motion, to dismiss Tampa Electric

Company's petition without prejudice to allow for the filing of a CAAA compliance plan which satisfies the requirements of Section 366.825, Florida Statutes (1997)

Respectfully submitted,

JACK SHREVE  
Public Counsel



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Deputy Public Counsel

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Attorneys for the Citizens of the  
State of Florida

**CERTIFICATE OF SERVICE  
DOCKET NO. 980693-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing SUGGESTION THAT THE FLORIDA PUBLIC SERVICE COMMISSION, ON ITS OWN MOTION, DISMISS TAMPA ELECTRIC COMPANY'S PETITION WITHOUT PREJUDICE has been furnished by U.S. Mail or \*Hand-delivery to the following parties on this 29th day of July, 1998

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