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Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Petition by Tampa Electric Company for Approval of Cost Recovery for a new Environmental Program, the Big Bend Units 1 and 2 Flue Gas Desulfurization System. FPSC Docket No. 980693-EI

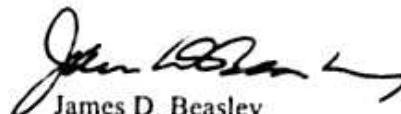
Dear Ms. Bayo

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to Office of Public Counsel's Suggestion for Dismissal.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

JDB/pp  
Enclosures

cc All Parties of Record (w/enc.)

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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 and 2 Flue Gas )  
Desulfurization System. )  
\_\_\_\_\_ )

DOCKET NO. 980693-E1  
FILED: August 11, 1998

**TAMPA ELECTRIC COMPANY'S RESPONSE  
TO OFFICE OF PUBLIC COUNSEL'S SUGGESTION FOR DISMISSAL**

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the suggestion by Office of Public Counsel ("OPC") that the Commission on its own motion dismiss Tampa Electric's Petition without prejudice:

1. OPC's suggestion is very similar to the Motion to Dismiss filed by the Florida Industrial Power Users Group ("FIPUG") and suffers the same deficiencies noted in Tampa Electric's Memorandum in Opposition to FIPUG's Motion to Dismiss. That Memorandum in Opposition is incorporated herein by reference.

2. OPC, like FIPUG in its Motion to Dismiss, misinterprets Section 366.8255, Florida Statutes. That statute, providing for cost recovery relative to environmental compliance activities, does not state that Clean Air Act Amendment ("CAAA") compliance activities must first be considered and approved as part of an overall CAAA compliance plan under Section 366.825, Florida Statutes, before they can be eligible for cost recovery under Section 366.8255, Florida Statutes. Instead, the cost recovery statute, Section 366.8255, authorizes utilities to seek approval of any environmental compliance activity, including any activities which may have been contained in a plan voluntarily submitted for approval pursuant to Section 366.825, Florida Statutes. Submitting a

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CAAA compliance plan for approval under Section 366.825, Florida Statutes, is clearly optional and not a mandatory prerequisite to seeking approval of any environmental compliance measure under the cost recovery statute.

3. Tampa Electric submits that Section 366.8255, Florida Statutes, on its face does not require preapproval of a CAAA related compliance action as part of a compliance plan under Section 366.825, Florida Statutes, as a prerequisite to approval of that action under Section 366.8255. Even if the statute were subject to differing interpretations, Tampa Electric's suggested interpretation is supported by prior Commission decisions. In implementing Section 366.8255, Florida Statutes, the Commission has approved CAAA compliance projects, both from a prudence and cost perspective, which were not pre-approved as part of a CAAA compliance plan under Section 366.825, Florida Statutes.<sup>1</sup> A construction placed on a statute by the state administrative officer or body charged with the responsibility for its enforcement is persuasive and entitled to great weight. 49 Fla.Jur., Statutes, §163. In reviewing administrative interpretations of regulatory statutes or rules, the Florida Supreme Court has stated that such interpretations are entitled to great weight, and will not be overturned by the courts unless they are clearly erroneous. Pan American World Airways v. Florida Public Service Commission, 427 So.2d 716, 719 (Fla. 1983).

4. OPC's contrary interpretation, that a CAAA compliance measure must be pre-approved as part of a plan under Section 366.825, Florida Statutes, rather than in a proceeding in Section 366.8255, suggests that the Commission cannot approve the prudence of measures proposed for cost recovery under the latter statute. This is contrary to the Commission's clear indication that

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<sup>1</sup> Order No. PSC-93-1580-FOF-EI issued October 29, 1993 in Docket No. 930661-EI, In re: Petition for Recovery of Environmental Compliance Costs by Florida Power & Light Company. Order No. PSC-96-1048-FOF-EI issued August 14, 1996 in Docket No. 960688-EI, Re: Tampa Electric Company.

it examines both the prudence of matters proposed for cost recovery as well as the actual dollars to be recovered.

5. As Tampa Electric pointed out in its Memorandum in Opposition to FPLG's Motion to Dismiss, since prudence approval is not required under Section 366.825, Florida Statutes, the Commission is free to consider both prudence and cost in a proceeding under Section 366.8255, Florida Statutes. Tampa Electric has merely requested that the proceeding under Section 366.8255, Florida Statutes, be bifurcated to cover prudence in a first phase and cost recovery in a second phase.

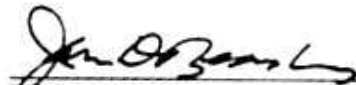
6. If OPC is contending that the information required to accompany a voluntary petition for compliance plan approval under Section 366.825, Florida Statutes, must accompany a petition under Section 366.8255, Florida Statutes, such argument is totally unsupported and contrary to the plain language of the two statutes. Nowhere in either statute are the plan requirements of Section 366.825, Florida Statutes, required to accompany a petition for approval of environmental compliance activities under Section 366.8255, Florida Statutes.

7. Even assuming, but not conceding, the information required to accompany a voluntary petition for a CAAA compliance plan approval under Section 366.825, Florida Statutes, is required in this case, Tampa Electric has met such requirement. Attached hereto as Exhibit "A" is a detailed list of the categories of information Tampa Electric has submitted in this proceeding in support of the prudence of its proposed FGD system as a means of complying with CAAA Phase II SO<sub>2</sub> emissions limitations. The supporting data supplied by the company surpasses the spirit and the letter of Section 366.825, Florida Statutes.

WHEREFORE, based on the matters set forth above and in Tampa Electric's previous Memorandum in response to FIPUG's similar motion, OPC's suggestion for dismissal should be disregarded by the Commission.

DATED this 11<sup>th</sup> day of August, 1998

Respectfully submitted,



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LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U S Mail on this 11<sup>th</sup> day of August 1998 to the following:

Ms. Grace Jaye\*  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
Room 390L - Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. John W. McWhirter, Jr.  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
Post Office Box 3350  
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Mr. Joseph A. McGlothlin  
Ms. Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
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117 South Gadsden Street  
Tallahassee, FL 32301

Mr. Jack Shreve  
Office of Public Counsel  
111 W. Madison Street, #812  
Tallahassee, FL 32399-1400

  
\_\_\_\_\_  
ATTORNEY

## Clean Air Act Amendment Compliance

1. The number and identity of the affected units

Tampa Electric has provided this information pertaining to SO<sub>2</sub> requirements in the Direct Testimony of Chuck Black (pages 3 and 4) and Page 104 of Exhibit TLH-1.

2. 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.

Tampa Electric in the Phase II Compliance document extensively details the proposed action as well as alternative actions to reduce the sulfur dioxide emissions.

3. 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.

Tampa Electric has not yet finalized the NO<sub>x</sub> compliance plan, even though there have been studies performed and initiatives taken to address the NO<sub>x</sub> compliance and stated such in the documentation provided.

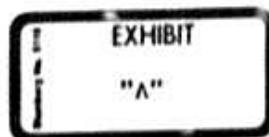
4. Estimated effects of the public utility's proposed plan on the following

5. a. Requirements for construction and operation of proposed or alternative facilities

Tampa Electric has provided information on the economics of the compliance plan in our initial filing and have followed up with the back up material for the assumptions used to derive the requirements information. This back up information includes cost estimates for capital and O&M for the chosen option as well as alternatives considered.

- b. Achievable emissions reductions and methods for monitoring emissions

Tampa Electric's economic analyses provided in the initial filing were based on achieving emission reductions and costs resulting from monitoring equipment necessary to ensure compliance. The information detailing the back up material for the economic analyses are provided in both Staff's and FIPUC's requests for interrogatories and documents



- c. The public utility's proposed schedule for implementation of compliance activities.

Tampa Electric has stated in its initial filing that the compliance option chosen is targeted to be in-service as of January 1, 2000. Tampa Electric has an obligation to comply with the CAAA Phase II requirements by January 1, 2000, and intends to do so through temporary use of fuel blending and allowance purchase.

- d. The estimated cost of implementation of the public utility's compliance plan to the utility's customers.

Tampa Electric has provided cost estimates of the scrubber in the compliance document and in C. Black and T. Hernandez direct testimonies. Tampa Electric further included estimates of the impacts to the customers through the environmental cost recovery clause based on financial assumptions used throughout the study.

- e. The public utility's present and potential future sources of fuel.

Tampa Electric's economic assessment utilized assumptions which identified expected sources and costs of fuels. This information was subsequently provided in Staff's interrogatory No. 11.

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

This information forms the basis of the direct testimonies of T. Hernandez and C. Black and the exhibits filed in the petition.

6. A description of the proposed actions to comply with federal, state and local requirements to implement the Clean Air Act.

Tampa Electric in the CAAA Phase II compliance document provided in Exhibit TLH-1, describes the CAAA legislation. This compliance plan addresses all federal state and local requirements to implement the SO<sub>2</sub> requirements of the Clean Air Act.