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ORIGINAL

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REC'D

August 14, 1998

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

RE: Docket No. 980693-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Prehearing Statement of the Office of Public Counsel in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing the Prehearing Statement of the Office of Public Counsel in WordPerfect for Windows 6.1. 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.

RECORDED & FILED  
BUREAU OF RECORDS

Sincerely,

*John Roger Howe*  
John Roger Howe  
Deputy Public Counsel

- ACK \_\_\_\_\_
- APP 1 \_\_\_\_\_
- ATTY \_\_\_\_\_
- CAJ \_\_\_\_\_
- CH \_\_\_\_\_
- CTR \_\_\_\_\_
- EA 1 \_\_\_\_\_
- LL 1 \_\_\_\_\_
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- OTH \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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-E1

FILED August 14, 1998

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No PSC-98-0864-PCO-E1, issued June 30, 1998, submit this Prehearing Statement.

APPEARANCES

JOHN ROGER HOWE, ESQUIRE  
Deputy Public Counsel  
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

A. WITNESSES

None

B. EXHIBITS

None at this time. However, exhibits may be introduced as necessary at hearing during examination of witnesses.

C. STATEMENT OF BASIC POSITION

Tampa Electric Company's petition and testimony only address the method chosen to meet SO<sub>2</sub> standards imposed by Phase II of the Clean Air Act Amendments of 1990, ignoring the NO<sub>x</sub> and particulate standards. The company apparently settled on the FGD system ("scrubber") as the most cost effective alternative for reducing SO<sub>2</sub> emissions in the late-1996 or early-1997 time frame. If the company was really interested in prior approval for its plan, it would have filed a petition last year which addressed all the requirements of Section 366.825, Florida Statutes (1997). It's too late now.

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to adopt another approach in time for year 2000 implementation. Neither the petition nor the prefiled testimony identify any adverse consequences which might flow from a Commission decision not to address the company's SO<sub>2</sub> compliance plan at this time. The Commission is being asked to ignore the dictates of Section 366.825 and misuse Section 366.8255 to evaluate an incomplete plan to achieve only partial compliance with the Act and declare the project eligible for environmental cost recovery and, perhaps, for AFUDC accrual.

The AFUDC issue is particularly troublesome because Tampa Electric has not been at all clear about what it is asking for. The company's prefiled testimony identifies the amount of AFUDC it thinks should be charged on the project and asks that the Commission allow the accrual pursuant to Rule 25-6.0141, Florida Administrative Code. But the rule already allows the utility to charge AFUDC on the scrubber project, albeit limited to the balance of major construction projects which exceed the amount of CWIP allowed in rate base in the last rate case. Tampa Electric was authorized pursuant to Order No. PSC-93-0664-FOF-EI to include almost \$55 million of CWIP (\$18,793,000 of short-term CWIP and \$36,171,000 of CWIP otherwise subject to AFUDC) in rate base in its last rate case. The Commission, at page 2 of that order, said that "[f]rom January 1, 1994 until ordered to modify or cease, the \$36,171,000, which is earning a return from this proceeding, shall offset CWIP balances that accrue AFUDC." Most of the \$83 million scrubber project, therefore, will not qualify for AFUDC under the cited rule or the last rate case order. Mr. Black's prefiled testimony [Exhibit (CRB-1), Document No. 4], however, shows projected AFUDC for the project of \$7,245,954. Is Tampa Electric intending to accrue AFUDC without regard to the CWIP-in-rate-base limitation and without saying so directly? Charging AFUDC on the entire project would allow Tampa Electric to report higher earnings to shareholders and require customers to pay higher environmental cost recovery factors to compensate for an investment improperly inflated by AFUDC. The Commission, however, could only allow Tampa Electric to accrue AFUDC on the entire scrubber project by waiving the provisions of Rule 25-6.0141. No request for waiver has been filed. Rule 25-22.036(7)(a)4 (which was applicable at the time the petition was filed) requires citation in the initial pleading to "rules and statutes which entitle the petitioner to relief." Rule 25-6.0141 was not cited in the petition.

Tampa Electric's petition should be denied. It's too late for prior approval and too early for a final evaluation. The company is already implementing the SO<sub>2</sub> portion of its compliance plan and building a scrubber for Big Bend Units 1 and 2. All relevant matters can be addressed at a subsequent proceeding when the company's compliance plan is complete and costs are known. Commission action is unnecessary on the AFUDC issue because Rule 25-6.0141 and Order No. 93-0664 already specify the appropriate treatment.

#### D. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1 Has Tampa Electric Company (TECO) adequately explored alternatives to the construction of a Flue Gas Desulfurization (FGD) system on the Big Bend Units 1 and 2?

- OPC Tampa Electric has adequately explored alternatives for SO<sub>2</sub> compliance, but it is unknown whether the scrubber would be part of a least-cost alternative when all facets of Clean Air Act compliance are considered together. Certainly, the company has not provided the Commission with all the information it must consider under Section 366.825, Florida Statutes (1997)
- ISSUE 2 Is the fuel price forecast used by TECO in its selection of a CAAA Phase II Compliance Plan reasonable?
- OPC No. Tampa Electric has not yet addressed all facets of its compliance plan and the effects of those compliance actions, taken together, on its fuel prices. Moreover, Tampa Electric has not identified its present and potential sources of fuel as required by subparagraph 366.825(2)(d)5, Florida Statutes (1997)
- ISSUE 3 Are the economic and financial assumptions used by TECO in its selection of a CAAA Phase II Compliance Plan reasonable?
- OPC The assumptions used in making the SO<sub>2</sub> compliance comparisons do not appear to be unreasonable. Tampa Electric, however, has apparently not adopted a comprehensive compliance plan at this time.
- ISSUE 4 Did TECO reasonably consider the environmental compliance costs for all regulated air, water and land pollutants in its selection of the proposed FGD system on Big Bend Units 1 and 2 for sulfur dioxide (SO<sub>2</sub>) compliance purposes?
- OPC No.
- ISSUE 5 Has TECO demonstrated that its proposed FGD system on Big Bend Units 1 and 2 for SO<sub>2</sub> compliance purposes is the most cost-effective alternative available?
- OPC Yes, at this time. Tampa Electric should be required at the next proceeding to affirmatively demonstrate that changed circumstances during the intervening period did not make another alternative more cost-effective when total costs, including costs already incurred in the scrubber option, are considered. Section 366.825, Florida Statutes (1997), however, precludes the Commission from piecemeal consideration of Clean Air Act compliance plans.

ISSUE 6: Should the Commission approve TECO's request to accrue allowance for funds used during construction (AFUDC) for the proposed FGD system on Big Bend Units 1 and 2?

OPC: Tampa Electric should be allowed to accrue AFUDC only to the extent that its CWIP balance exceeds the amount of CWIP allowed in rate base in the company's last rate case consistent with Rule 25-6.0141(1), Florida Administrative Code. See discussion in OPC's statement of basic position.

ISSUE 7: Should TECO's petition for cost recovery for a FGD system on Big Bend Units 1 and 2 through the Environmental Cost Recovery Clause (ECRC) be granted?

OPC: No. Such a decision would be premature given the fact that Tampa Electric plans to file at a later date for actual cost recovery after costs are known.

ISSUE 8: Should this docket be closed?

OPC: Yes.

#### E. STATEMENT OF LEGAL ISSUES AND POSITIONS

Public Counsel, on July 29, 1998, filed a "Suggestion that the Florida Public Service Commission, on its Own Motion, Dismiss Tampa Electric Company's Petition Without Prejudice." That pleading raised the following legal issue:

ISSUE: 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 when the requirements of Section 366.825 have not first been satisfied.

OPC: No.

#### F. STATEMENT OF POLICY ISSUES AND POSITIONS      None

#### G. STIPULATED ISSUES

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

**I HEREBY CERTIFY** that a true and correct copy of the foregoing PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL has been furnished by U S Mail or

\*Hand-delivery to the following parties on this 14th day of August, 1998

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Florida Public Service Commission  
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Tallahassee, Florida 32399-0850

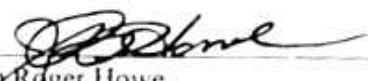
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