

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Tampa
Electric Company for approval of
new environmental programs for
cost recovery through the
environmental cost recovery
clause.

DOCKET NO. 990976-EI
ORDER NO. PSC-99-2103-PAA-EI
ISSUED: October 25, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TAMPA ELECTRIC COMPANY'S PETITION FOR APPROVAL OF
NEW ENVIRONMENTAL PROGRAMS

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.

I. INTRODUCTION

Pursuant to Section 366.8255, Florida Statutes, and Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, and Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in Docket No. 940042-EI, on July 28, 1999, Tampa Electric Company (TECO or the Company) filed a Petition for Approval of New Environmental Program for Cost Recovery through the Environmental Cost Recovery Clause (ECRC). In its petition, TECO seeks approval for two new programs, the EPA Mercury Information Request (Mercury Information Request) program and the Gannon Electrostatic Precipitator Optimization Study (Gannon ESP Study) program. TECO

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REGULATORY REPORTING

seeks approval of the proposed programs as environmental compliance programs appropriate for recovery through the ECRC.

Pursuant to Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in Docket No. 940042-EI, a company must seek cost recovery through the ECRC prospectively. Thus, utilities are expected to petition for Commission approval of new project costs before the project costs can be included in the ECRC. The level of costs to be recovered through the ECRC factors is typically determined at an annual ECRC hearing in November. From time to time, because utilities must meet a new environmental requirement on short notice, a company may petition after the November hearing for approval of cost recovery for a new project. This petition presents such a case.

Pursuant to the provisions of Section 366.8255, Florida Statutes, the specific criteria for costs to be recovered through the ECRC were established in two Commission orders. First, Order No. PSC-94-1207-FOF-EI, issued October 3, 1994, in Docket No. 940042-EI, states, in part, that ". . . a utility's petition for cost recovery must describe proposed activities and projected costs, not costs that have already been incurred." (p. 5.) Second, Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, established three criteria for costs to be recovered through the ECRC:

- (1) such cost were prudently incurred after April 13, 1993;
- (2) the activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the company's last test year upon which rates are based; and,
- (3) such costs are not recovered through some other cost recovery mechanism or through base rates. (pp. 6-7)

These are the basic criteria for our ongoing ECRC review of utility data and activities, including new project filings, projected cost filings, and true-up filings. In each stage of review, applicability of the criteria may differ depending on the available information. For example, until the projected costs become actual, it is premature to determine whether they will be prudently incurred.

II. TECO'S PROPOSED PROGRAMS

A. EPA Mercury Information Request Program

This program is mandated by the United States Environmental Protection Agency (EPA) and is comprised of two parts. The first part, collection of mercury data through coal analyses, is similar to Gulf Power Company's Mercury Information Request project which we approved on June 4, 1999, in Order No. PSC-99-1125-CO-EI, issued in Docket No. 981973-EI. TECO is required to periodically sample and analyze coal shipments for mercury and chlorine content during the period January 1, 1999, through December 31, 1999. Coal analyses will be performed by TECO's in-house laboratory. TECO also uses the laboratory for ongoing quality assurance analyses of coal shipment samples.

The second part of the Mercury Information Request program is the measurement of the speciated mercury in stack emissions. TECO's Unit 1 at Polk and Unit 3 at Big Bend Power Stations were among a list of 84 power plants required by EPA to perform such tests. In order to comply with the EPA request, TECO must measure mercury species emitted from the stacks of Polk Unit 1 and Big Bend Unit 3. In addition, emissions at the scrubber inlet of Big Bend Unit 3 must also be tested. Stack testing and sampling will be performed by outside contract labor.

TECO's projected total expenditures for the Mercury Information Request program are approximately \$114,750 for calendar year 1999. The O & M expenses are projected to be \$49,750. The capital expenditures are expected to be \$65,000 due to the need to construct permanent scaffolding to access the stack testing location.

B. Gannon ESP Study Program

This program is a condition of TECO's Gannon Station fuel yard permit, which was approved by the Florida Department of Environmental Protection (FDEP) on February 9, 1999. FDEP required an Electrostatic Precipitator (ESP) Optimization Study to be conducted for all six units at the facility within six months of the permit being issued. TECO obtained a 3-month extension from FDEP to complete the study, which is to be completed by November, 1999.

An outside contractor has been selected to conduct the study. The scope of work for this study involves investigating the ESP operations for all six ESPs at the Gannon Station and identifying the operating procedures and parameters that will provide the most effective particulate collection efficiency for each ESP. The Gannon ESP study will result in O & M expenses only. TECO's projected expenditures for calendar year 1999 are approximately \$110,000.

III. APPLICABLE CRITERIA

A. Prospective and Documentation Requirements

We believe that TECO has petitioned prospectively for approval of its proposed activities and provided the documentation required by Order No. PSC-94-1207-FOF-EI. Although the coal analysis work has begun, TECO only seeks recovery for costs incurred after it filed its petition.

B. Time Requirements

We believe that TECO's two proposed programs satisfy the relevant time requirements specified in criteria (1) and (2). TECO stated that the costs of the two new programs will be incurred in calendar year 1999, well beyond the April 13, 1993, date set by Order No. PSC-94-0044-FOF-EI. It is also clear that the environmental requirements for the two programs were imposed after the company's base rates were last set. The Mercury Information Collection program was imposed by two EPA letters dated November 25, 1998, and March 11, 1999, respectively; the Gannon ESP Study program was imposed by the FDEP permit issued on February 9, 1999. TECO's base rates were last set by the stipulation approved by Order No. PSC-96-1300-S-EI, issued in Docket No. 960409-EI, on October 24, 1996, which preceded the environmental requirements for the two programs.

C. Environmental Compliance Requirements

We have reviewed TECO's two proposed programs and we believe that each program is legally required to comply with a governmentally imposed environmental regulation as specified in criterion (2). The Mercury Information Request program is an EPA directive. Section 114 of the Clean Air Act gives EPA the authority to require that electric utilities provide certain information that will assist EPA in making policy decisions on

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mercury emissions. EPA is the environmental authority and has set forth the specific compliance requirement for TECO to implement the Mercury Information Request program.

The Gannon ESP study is required by FDEP as a condition of TECO's Gannon Station fuel yard permit approval. In the letter issuing the permit, FDEP stated in part:

The modifications at the fuel yard are considered to be a Pollution Control Project (PCP) for the reduction of NOx, as described in Attachment 1 and agreed to by TECO in their 12/23/97 Title IV Acid Rain Phase II NOx Control Plan.

Moreover, as one of the conditions of the permit approval, the FDEP specified that:

As part of the PCP, an Electrostatic Precipitator Optimization Study shall be conducted for all six units at the facility within six months of the permit being issued. A report shall be due at that point and submitted to both the Environmental Protection Commission of Hillsborough County (EPC) and the Department. The study shall be subject to EPC and Department approval and full implementation of the study shall be completed within twelve months of the permit issue date, or within a period mutually agreed to by the permittee and the EPC. The permittee's application to revise their Title V operating permit shall include verifiable and enforceable operating parameters for the ESPs which reflect the results of the optimization study.

The use of high moisture, low heat content coals has been TECO's primary compliance approach for its Title IV Acid Rain Phase II NOx Control Plan. Because of the low heat content, coal throughput must be increased to maintain the plant availability. Burning more coal results in emission increases of particulate matter (PM/PM₁₀), which is controlled by Electrostatic Precipitators (ESPs). FDEP considered the modifications at the fuel yard to be a PCP, and as a result, the ESP optimization study was required to improve the ESP operating characteristics.

D. Prudence

Based on TECO's representation of its actions taken to date, we believe that TECO has been prudent with respect to its two proposed programs. In each case an environmental authority (EPA or FDEP) has set forth the specific compliance requirement for TECO, thus no alternative compliance approaches appear to apply. However, TECO's proposed activities still must be reviewed to ensure that the company has taken the necessary actions to comply with the environmental requirement at a reasonable cost. After reviewing the proposed scope of work and the specific tasks for the two programs, we believe that TECO's proposed activities are necessary to meet the environmental requirement. We also note that TECO solicited bids for the stack testing of mercury emissions and for the Gannon ESP study in order to select the lowest-cost outside contractor who could meet the minimum specified criteria of the environmental authorities.

We will continue to monitor and evaluate the prudence of the projects in the regular ECRC docket as TECO's actual costs and other relevant information become available. It is incumbent upon the Company to continue to monitor costs, trends, technology, and other relevant factors affecting the prudence of the means of meeting environmental requirements. Changes which could impact the continuation of any project are appropriate for consideration in the ECRC hearings or other rate-setting proceeding.

E. Cost Recovery Mechanism

We believe that the ECRC is the appropriate cost recovery mechanism for the two programs. TECO's petition stated that none of the expenditures are being recovered through any other cost recovery mechanism or through base rates. We agree that the proposed activities were not included in TECO's last rate case test year. We also believe that most of the prudently incurred costs for the two programs are recoverable through the ECRC. However, this does not mean that current base rates do not provide some level of cost recovery. These specific cost recovery issues, as further discussed in Section V, are normally addressed in the November hearing.

IV. QUALIFICATION OF RECOVERY THROUGH THE ECRC

We believe, therefore, that all applicable criteria are satisfied for the two programs to qualify as new environmental

programs appropriate for cost recovery through the ECRC. The prudence and specific cost recovery issues require further engineering assessment and financial monitoring as more information becomes available. We will continue to monitor TECO's proposed programs in the ongoing ECRC docket.

V. OTHER ISSUES FOR NOVEMBER COST RECOVERY HEARING

The amount eventually approved for recovery through the ECRC depends on the outcome of two issues set for the November hearing. The first deals with capitalized labor. The second addresses expenditures that could have resulted from normal business operations.

Double recovery was an issue in the 1998 ECRC hearing. In Order No. PSC-98-1764-FOF-EI, issued December 31, 1998, in Docket No. 980007-EI, we addressed the capitalized labor issue and made a downward adjustment to TECO's classifier replacement project. The Order states in part that "Absent the adjustment, it appears that TECO may recover the same costs through both base rates and the ECRC." In the instant petition, TECO has projected a \$15,000 capital expenditure for in-house engineering for the Mercury Information Request program. This expenditure may be implicated in the capitalized labor issue.

In addition, some ECRC activities and investment, while necessary for environmental compliance, could have partially resulted from the need to conduct utilities' normal business operations. FDEP, in its Attachment 1 of the fuel yard permit issued on February 9, 1999, stated in part:

However, with growing electrical demand, lower statewide electrical reserve capacity, and the use of low heat content coal, the throughput limit has become an actual restriction on the overall plant availability.

If it is shown that the fuel yard modification, and thus the need for the ESP study, was not solely driven by the need to comply with environmental regulations, then a portion of the costs may be recoverable through base rates.

VI. HOW COSTS SHOULD BE INCLUDED IN THE ECRC FOR POTENTIAL RECOVERY

Because the costs incurred in 1999 for the two new programs are minimal, we believe that they should be included in the true-up amounts for the period, rather than adjusting the currently effective (January - December 1999) factors via a mid-course correction. This would mean that the costs will be reflected in the new ECRC factors for the period January through December 2000, and is consistent with our past decisions in such situations.

Because both new projects are Clean Air Act compliance activities, the costs should be allocated to the rate classes on an energy basis, pursuant to the guidelines established in Order No. PSC-94-0393-FOF-EI, issued in Docket No. 940042-EI, on April 6, 1994. We will determine the prudence of the project costs incurred in a later ECRC hearing, and final disposition of the costs will be subject to audit.

Therefore, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Petition for Approval of New Environmental Programs for Cost Recovery Through the Environmental Cost Recovery Clause is hereby granted. 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 Records and Reporting, 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.

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By ORDER of the Florida Public Service Commission this 25th
day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 15, 1999.

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