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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 001186-EI - Petition for approval  
of new environmental programs for cost  
recovery through the Environmental Cost  
Recovery Clause by Tampa Electric Company.

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BEFORE: CHAIRMAN J. TERRY DEASON  
COMMISSIONER E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 41\*\*PAA

DATE: Tuesday, October 17, 2000

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
Registered Professional Reporter

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DOCUMENT NUMBER-DATE

13699 OCT 26 8

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## PARTICIPANTS:

JAMES D. BEASLEY, Ausley & McMullen, on behalf of Tampa Electric Company.

MARLENE STERN, on behalf of the Commission Staff.

JIM BREMAN, Commission Staff.

## STAFF RECOMMENDATION

Issue 1: Is Tampa Electric Company's Particulate Emission Minimization and Monitoring Program (PM Program) eligible for cost recovery through the ECRC?  
Recommendation: Yes.

Issue 2: Is Tampa Electric Company's Reduction of Nitrogen Oxide Emissions Program at Big Bend Units 1, 2, and 3 (NOX Program) eligible for cost recovery through the ECRC?  
Recommendation: Yes.

Issue 3: Should this docket be closed?  
Recommendation: Yes. This docket should be closed upon issuance of a consummating order unless a person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the proposed agency action order.

1 CHAIRMAN DEASON: Item 41.

2 MS. STERN: Item 41 is staff's  
3 recommendation on TECO's petition for cost  
4 recovery through the Environmental Cost Recovery  
5 Clause.

6 CHAIRMAN DEASON: Okay. Mr. Beasley, are  
7 you here to make a presentation or answer  
8 questions?

9 MR. BEASLEY: Commissioners, James D.  
10 Beasley with the law firm of Ausley & McMullen,  
11 representing Tampa Electric Company. With me is  
12 Diedra A. Brown, who is the Director of  
13 Regulatory Affairs for Tampa Electric. We are  
14 in full agreement with the staff's  
15 recommendation and are here only if you have any  
16 questions for us.

17 CHAIRMAN DEASON: Very well.  
18 Commissioners, questions?

19 COMMISSIONER JACOBS: There was a question  
20 that I had on this. It's my understanding that  
21 we're only voting here to determine the  
22 eligibility of these costs and that we'll look  
23 at the actual amounts later in the recovery  
24 docket.

25 MR. BREMAN: That's correct. They will be

1 audited.

2 COMMISSIONER JACOBS: Okay. Now, the issue  
3 is, there was a compliance that was required  
4 based on standards that were set forth in the  
5 action that was filed by the federal agency. As  
6 I understood it at that time, the Company was  
7 under compliance, or arguably under compliance  
8 with the provision that applied to it. Is that  
9 correct? There was an argument about whether --  
10 I understand there was a point of dispute.

11 MR. BREMAN: The dispute was over the  
12 definition of a modification to a power plant.

13 COMMISSIONER JACOBS: Right.

14 MR. BREMAN: And the EPA and the DEP argued  
15 in the terms that old power plants should  
16 conform to new requirements when they become  
17 modified. Essentially, these new projects  
18 achieved that same end.

19 COMMISSIONER JACOBS: Now, setting aside  
20 that dispute, when the Company decided to bring  
21 these plants into compliance, the standard that  
22 they agreed to adopt, is that what the law at  
23 that time required in terms of the emission  
24 requirements and technology, or did they agree  
25 to something in the consent decree that was

1 above and beyond what was provided by law at  
2 that time?

3 MS. STERN: Are you asking what TECO agreed  
4 to in its consent decree and how that compares  
5 to the law at the time the consent decree was  
6 signed?

7 COMMISSIONER JACOBS: Right.

8 MS. STERN: I believe, and I hope TECO  
9 corrects me if I'm wrong, that the consent  
10 decree imposes more stringent standards than the  
11 Clean Air Act would have, because under the  
12 Clean Air Act, those plants were grandfathered,  
13 meaning that they don't have to meet all the  
14 requirements that newer plants have to meet.  
15 But once there was this alleged violation, I  
16 gather it is the policy somehow at the EPA that  
17 if you have a certain, you know, type of  
18 violation, what you do -- if they litigated it  
19 and went to court, the remedy would be come into  
20 compliance, lose your grandfathering status and  
21 come into compliance with what applies to all  
22 plants.

23 And what TECO essentially agreed to in its  
24 settlement agreement was, "We'll come into  
25 compliance, meet the compliance standards of the

1 newer plants. We don't want to litigate this,  
2 and we think we're going to lose the  
3 grandfathering status ultimately anyway. We  
4 think that's going to be phased out of the Clean  
5 Air Act."

6 COMMISSIONER JACOBS: Okay. That's all the  
7 questions I have.

8 CHAIRMAN DEASON: Okay. Is there a motion?

9 COMMISSIONER BAEZ: I just have one  
10 question. The two, the consent decree and the  
11 final judgment, are they -- in relation to each  
12 other, do they overlap, do they complement, or  
13 is one wrapped around the other? I guess the  
14 federal -- does the federal wrap around the  
15 state?

16 MR. BREMAN: Which takes precedence? Is  
17 that your question?

18 COMMISSIONER BAEZ: Not which takes  
19 precedence. If I understand Ms. Stern's  
20 statement, they've decided to comply with the  
21 more stringent of the two, but are there places  
22 in the two judgments where --

23 MR. BREMAN: There's substantial overlap,  
24 and there is some higher level of degree of  
25 specificity in the consent decree. A lay person

1 would say if you comply with the consent decree,  
2 you certainly comply with the other one.

3 COMMISSIONER BAEZ: All right. And taking  
4 that into consideration, are there economies  
5 picked up in the costs that are trying to be  
6 recovered in complying with one versus complying  
7 with the overall, or is that not even a  
8 question?

9 MR. BREMAN: I think there are certain  
10 differences between the two settlements, for  
11 example, something that's not on the table for  
12 us, for the decision today, regarding some  
13 expense levels that they must incur up to a  
14 certain amount. Those amounts are different  
15 between the two settlements, and the consent  
16 decree tends to have higher amounts. Therefore,  
17 if you comply with the consent decree, you would  
18 tend to overshadow the consent final judgment  
19 with the DEP.

20 COMMISSIONER BAEZ: Thank you.

21 COMMISSIONER JACOBS: I do have one more  
22 question kind of in line with that.

23 When we look at this standard that we've  
24 traditionally observed that says to comply with  
25 a governmentally imposed environmental

1 regulation, have we looked at -- does that  
2 derive from something in the statute, or is it  
3 -- it's pretty much pertaining to the government  
4 actions towards the company, isn't it?

5 MR. BREMAN: It's in the definitions of the  
6 statute, 366.8255, and it's (1)(c) in the  
7 definitions.

8 MS. STERN: And the definition includes  
9 orders, and this is really an order.

10 COMMISSIONER JACOBS: Mr. Chairman, this is  
11 an interesting issue. I think the record on  
12 this is not for any particular debate or  
13 dispute. The concern I had is -- I believe the  
14 actions taken were to bring the company into  
15 compliance, and we'll get to look at to what  
16 extent the costs incurred were the best -- I  
17 struggle with this, because the thought occurs  
18 to me, are we going to have to sit here again?  
19 That really is my concern. This action I don't  
20 think is anything that we could take any  
21 particular dispute with, but I'm afraid that we  
22 may be sitting at this debate, at this  
23 discussion again.

24 And if that is the case, are we going to  
25 have basically the plate handed to us again?



1           And it will be very difficult for me to continue  
2           through this process if we're going to continue  
3           to see standards imposed for, basically what I'm  
4           hearing today, guaranteed recovery that we have  
5           very little voice in determining that, because  
6           if -- the company would have looked to plan out  
7           for what they saw the law to be, and I would  
8           have thought that we would have tried to adopt  
9           and embrace a positive planning procedure that  
10          would allow these costs to be managed better.

11                 But when they come up like this and really  
12          off of fluid interpretations of the law, we have  
13          very little we can do on the back end to  
14          scrutinize that. And I'm struggling, because we  
15          have to figure out a better way of doing this.  
16          I don't know how that is. But we can't get to  
17          the back end and try and figure out how to  
18          scrutinize these costs, because we have very  
19          little leeway or flexibility in doing that.  
20          Yeah, we can do some scrubbing on the numbers --  
21          that's a pun on words, by the way.

22                 But in my mind, we have to pursue a better  
23          route of doing this, and I don't know how we do  
24          this. It may take some discussions with the  
25          federal agencies and ourselves. But we need to

1 figure out how not to get to this point to try  
2 to manage these costs on the back end. And  
3 that's really my concern, one of the things I  
4 wanted to raise in the docket.

5 Having said that, I don't think that I  
6 would oppose today staff's recommendation absent  
7 raising that red flag.

8 CHAIRMAN DEASON: Okay. Is that a motion  
9 then to approve staff's recommendation?

10 COMMISSIONER JACOBS: I so move.

11 COMMISSIONER JABER: Second.

12 CHAIRMAN DEASON: It's been moved and  
13 seconded. All in favor say aye.

14 COMMISSIONER JACOBS: Aye.

15 COMMISSIONER BAEZ: Aye.

16 CHAIRMAN DEASON: Aye. Show then that  
17 staff's recommendation on Item 41 is approved.

18 (Conclusion of consideration of Item 41.)  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)  
COUNTY OF LEON )

I, MARY ALLEN NEEL, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter transcribed under my supervision; and that the foregoing pages numbered 1 through 10 are a true and correct transcription of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, or relative or employee of such attorney or counsel, or financially interested in the action.

DATED THIS 23rd day of October, 2000.

  
\_\_\_\_\_  
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