

State of Florida



Public Service Commission

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DATE: January 20, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Bremar) *Bremar*
Office of the General Counsel (Stern) *MKS Stern* *RLT* *1/20*

RE: Docket No. 041300-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

AGENDA: 02/01/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\041300.RCM.DOC

Case Background

On November 10, 2004, Tampa Electric Company (“TECO” or “Company”) petitioned for cost recovery through the Environmental Cost Recovery Clause (“ECRC” or “statute”) for a Comprehensive Demonstration Study to determine the effect of cooling water intake structures on aquatic life. The Comprehensive Demonstration Study is necessary to address rule changes adopted by the U.S. Environmental Protection Agency (“EPA”) pursuant to Section 316(b) of the Clean Water Act. The new rules establish requirements to reduce the mortality of aquatic organisms by cooling water intake structures at certain existing large power plants, and are codified in 40 CFR Parts 9, 122, 123, 124, and 125. The new rules became effective September 7, 2004; however the new rules have been challenged.

Section 366.8255, Florida Statutes, the ECRC, gives the Commission the authority to review and decide whether a utility’s environmental compliance costs are recoverable through an environmental cost recovery factor. Electric utilities may petition the Commission to recover

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projected environmental compliance costs required by environmental laws or regulations. Section 366.8255(2), Florida Statutes. Environmental laws or regulations include “all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment.” Section 366.8255(1)(c), Florida Statutes. If the Commission approves the utility’s petition for cost recovery through this clause, only prudently incurred costs may be recovered. Section 366.8255(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve TECO's petition for the Comprehensive Demonstration Study as a new activity for cost recovery through the ECRC?

Recommendation: Yes. The program is eligible for recovery through the ECRC and any prudently incurred costs for the Comprehensive Demonstration Study are appropriate for recovery through the ECRC, consistent with the Commission's offsetting policy established in Order No. PSC-00-1167-PAA-EI. If the EPA rule is stayed or new content is proposed, TECO shall notify the Commission within two weeks of such change. (BREMAN, STERN)

Staff Analysis: Effective September 7, 2004, the EPA established new performance standards for reducing the mortality of fish and shell fish associated with cooling water intake structures at certain existing large electric generating plants. The plants subject to the new rules must have commenced construction on or before January 17, 2002, and be designed to withdraw at least 50 million gallons per day from waters of the United States. The EPA estimates 22 existing power plants in Florida will be affected by the new performance standards. In Florida, the Department of Environmental Protection ("DEP") will be incorporating the new performance requirements into utilities' National Pollution Discharge Elimination System ("NPDES") permits as the permits are renewed.

TECO's affected power plants are shown in Table 1 below. Pursuant to the requirements of the new rules, TECO must first complete a Comprehensive Demonstration Study ("CDS"). The purpose of the CDS is to: 1) determine a quantified baseline impact and derive performance standards; 2) gauge the current performance of the facility against the performance standards; and, 3) develop and design appropriate measures for compliance if the facility falls short of meeting the performance standards. Thus, the CDS will provide TECO with the necessary information to determine the most efficient and cost-effective manner to meet the new performance standards. The DEP will use TECO's CDS results as a basis for evaluating compliance and issuance of future NPDES permits for each plant. The expiration dates of TECO's current NPDES permits are noted in Table 1. Each renewed NPDES permit is expected to codify additional TECO compliance requirements that are currently unknown.

The ECRC requires that "any costs in base rates may not also be recovered in the environmental cost recovery clause." Section 366.8255(5), Florida Statutes. Thus, when a utility allocates costs for environmental studies in base rates and that allocation goes unused, the costs for any new studies to be passed through the ECRC should be offset by the unused portion of the allocations in base rates. See Order No. PSC-00-1167-PAA-EI, issued June 27, 2000, in Docket No. 991834-EI, In Re: Petition for approval of deferred accounting treatment for the Gulf Coast Ozone Study Program by Gulf Power Company. In that proceeding Gulf Power Company questioned the practice of offsetting, but the Commission determined that the practice:

fairly balances the interests of the rate payers and shareholders and is consistent with Section 366.8255, Florida Statutes, which provides that "[a]n adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing."

Both Florida Power & Light Company ("FPL") and Progress Energy Florida, Inc., ("PEFI") were granted ECRC treatment of their prudently incurred CDS costs consistent with the established offsetting policy. See Order No. PSC-04-0987-PAA-EI, issued October 11, 2004, in Docket No. 040582-EI, In Re: Petition for approval of recovery through environmental cost recovery clause of costs associated with Clean Water Act Section 316(b) Phase II rule project by Florida Power & Light Company. See Order No. PSC-04-0990-PAA-EI, issued October 11, 2004, in Docket No. 040472-EI, In Re: Petition for approval of cost recovery for new environmental program necessitated by U.S. Environmental Protection Agency's adoption of rules establishing new requirements for cooling water intake structures at existing electric power generation facilities under Section 316(b) of Clean Water Act, by Progress Energy Florida, Inc.

A total amount of \$37,600 per year for environmental studies is included in TECO's current base rates which were set by Order No. PSC-93-0165-FOF-EI, issued February 2, 1993, in Docket No. 920324-EI, In Re: Application for a rate increase by Tampa Electric Company. The specific environmental studies and resultant costs have changed since 1993. For 2005, TECO budgeted \$575,400 for environmental studies that will not be recovered through the ECRC. This amount is \$538,000 in excess of environmental study costs currently recovered in base rates. Thus, allowing TECO recovery of costs through the ECRC is consistent with Order No. PSC-00-1167-PAA-EI because TECO is incurring costs for environmental studies in excess of the amount included in current base rates. Consequently, TECO's projected CDS expenses are eligible for recovery through the ECRC without adjustments. Staff notes that, consistent with Order No. PSC-00-1167-PAA-EI, a future TECO filing may include a downward adjustment in the event that TECO's annual expenditures on environmental studies decline below the amount included in current base rates during the relevant ECRC recovery period.

Table 1
 TECO's Environmental Studies, Permits, and Costs

| TECO's Affected Power Plants | Prior Impingement & Entrainment Studies | | NPDES Permit Expiration Date | Estimated Cost for the Comprehensive Demonstration Study (See note) | Annual Costs for Environmental Studies not in clauses |
|------------------------------|---|----------------|---|---|---|
| | Year | Cost | | | |
| Big Bend | 1977, 1979, and 1980 | Not available | New permit under review. Application was made in February 2002. | November and December of 2004 \$50,000 | \$37,600 allowance in current base rates |
| Bayside | None | Not applicable | January 2006 | \$650,000 for 2005 | 2005 budget level is \$575,400 |

Note: The projected cost for the CDS activity through 2005 is based on TECO expert opinion. Actual costs will reflect competitive bid results.

The new EPA rules have been challenged by six states, several utilities, and several environmental groups. The challenge is currently pending before the U.S. Court of Appeals,

Second Circuit, where it was transferred from the Ninth Circuit. The rule is in effect but it is impossible to know whether it will be stayed or changed in a way that affects TECO's CDS activity.

It is up to the utility to decide if it is prudent to start spending money on the program at this time, under these circumstances. As always, the issue of prudence will be reviewed at the annual November hearing on the ECRC. If the status or content of the EPA rule changes, TECO should notify the Commission within two weeks of such change and provide documentation of such change. The manner in which any such change will be handled procedurally and substantively will be addressed at that time.

TECO is requesting that the current ECRC factors not be changed. Instead, TECO proposes that all activity costs incurred subsequent to the filing of this Petition will be included in its ECRC true-up filings and projection filing in the ECRC. All things being equal, the estimated monthly residential customer bill increase for the remainder of 2005 would be \$0.50 based on a 1,000 kWh/month usage for 10 months and allocating the costs to rate classes on a 12CP and 1/13 average demand basis. Thus, a mid-course correction is not necessary because including the CDS costs in the true-up cycle of the ECRC does not result in a substantive increase in customer bills.

Conclusion

TECO has shown that its CDS activity is legally required to comply with a governmentally imposed environmental regulation. TECO provided information explaining its proposed CDS activity and projected costs through 2005. TECO's 2005 CDS expenses are in excess of the level of costs currently being recovered through its base rates for environmental studies. The costs for CDS expenses should be allocated to rate classes on a 12CP and 1/13 average demand basis. TECO can make subsequent ECRC filings addressing the ongoing nature of TECO's CDS activities. If the EPA rule is stayed or new content is proposed, TECO should notify the Commission within two weeks of such change.

Therefore, staff believes prudently incurred costs for the Comprehensive Demonstration Study are appropriate for recovery through the ECRC consistent with the Commission's offsetting policy established in Order No. PSC-00-1167-PAA-EI.

Docket No. 041300-EI

Date: January 20, 2005

Issue 2: 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 Commission's decision files a protest within 21 days of the issuance of the proposed agency action. (STERN)

Staff Analysis: If no timely protest to the proposed agency action is filed within 21 days, this docket should be closed upon the issuance of a Consummating Order.