

ORIGIANNED

Matilda Sanders

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Sent: Friday, July 21, 2006 11:02 AM
To: Filings@psc.state.fl.us
Cc: CHRISTENSEN.PATTY; regdept@tecoenergy.com; Martha Brown; lwillis@ausley.com; RollinsMR@bv.com
Attachments: Petition on Proposed Agency Action.doc final.doc

On behalf of Patricia A. Christensen, Office of Public Counsel
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1. This filing is to be made in Docket Number: 050958-EI, In Re: Petition for approval of new environment program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company
2. Attached for filing on behalf of Office of Public Counsel is a Petition on Proposed Agency Action
3. There are a total of five (5) pages for filing

Thanks,
 Phyllis Davis

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 FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company

Docket No.: 050958-EI

Filed: July 21, 2006

PETITION ON PROPOSED AGENCY ACTION

The Citizens of the State of Florida (Citizens), by and through undersigned counsel, pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029 and 28-106.201, Florida Administrative Code, file this protest to the Florida Public Service Commission's (Commission) Order No. PSC-06-0602-PAA-EI, issued July 10, 2006. In that Order, the Commission proposed to approve Tampa Electric Company's (TECO) request for authority to recover the costs of its proposed "Big Bend Flue Gas Desulfurization System Reliability Program" through the Environmental Cost Recovery Clause. In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No.: 050958-EI

2. The Citizens include the customers of TECO whose substantial interests will be affected by the Order because the Order authorizes TECO to collect from its customers the costs of the proposed program through the ECRC clause.

3. Pursuant to Section 350.11, Florida Statutes, the Citizens who file this Petition are represented by the Office of Public Counsel ("Citizens" or "OPC") with the following address and telephone number:

DOCUMENT NUMBER-DATE

06450 JUL 21 06

FPSC-COMMISSION CLERK

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. : (850) 488-9330

4. The Citizens obtained a copy of the Order from the Commission's website on July 10, 2006, the date on which the Order was posted to the website.

5. At this time the disputed issues of material facts, including a concise statement of the ultimate facts alleged and those facts which Citizens contend warrant reversal and/or modification of the agency's proposed action are as follows:

a. TECO petitioned the Commission for approval of several proposed projects at its Big Bend station for recovery through the ECRC clause. TECO entitled these projects its "Big Bend Flue Gas Desulfurization System Reliability Program." TECO contends that these improvements are necessary to comply with the settlement agreements it entered with the Florida Department of Environmental Protection (FDEP) on December 16, 1999, and the United States Environmental Protection Agency (EPA) on February 29, 2000. Specifically, TECO alleges that these improvements are necessary to comply with Paragraph 40 of the Consent Decree entered into with the EPA in February 2000.

b. Citizens contend that the proposed improvement projects are not necessary or required to comply with Paragraph 40 of the Consent Decree and therefore are not eligible for recovery through the ECRC clause.

c. Section 366.8255, Florida Statutes, provides that electric utilities may petition the Commission for all of its prudently incurred cost that were necessary and required for complying with environmental laws or regulations. All costs recovered through base rates or other recovery mechanisms are required to be excluded from recovery through

the ECRC clause. However, while utilities have an incentive to roll as many costs as possible through cost recovery clauses, thereby avoiding the necessity of absorbing them through base rates between rate cases, the fact that an expenditure may be “environmental” in nature does not automatically qualify it for recovery through the cost recovery clause. Projects, which may be warranted and even desirable for other reasons but which are not necessary to comply with any governmentally imposed environmental compliance mandate, cannot be passed through in the ECRC clause. See, Order No.: 94-0044-FOF-EI, issued January 12, 1994. In addition, the Commission should not allow costs that are unreasonable in amount to be recovered through the clause.

d. The projects proposed by TECO are not necessary to enable the Company to comply with Paragraph 40 of the CD which provides that the Big Bend Units may not run unscrubbed after January 1, 2010, for Unit 3, and January 13, 2013 for Units 1 and 2. TECO proposes 13 modifications and/or additions which it contends will improve the FGD’s reliability but makes no claim that these modifications will improve the overall system reliability. TECO does not need to make any of the modifications to run its current FGD systems. In its request, TECO has not described a “new” environmental program. TECO has a working FGD system in place today. These projects that are not required to make the FGD function are discretionary in nature. Therefore, these projects fail to meet the requirements of Section 366.8255, Florida Statutes, to be included as pass through items in the ECRC clause.

6. In addition, TECO has not demonstrated that the costs it proposes to recover through the ECRC clause are prudently incurred and reasonable in amount.

7. By Order No. PSC-06-0602-PAA-EI, protests of the Order shall be filed with the clerk of the Division of the Commission Clerk and Administrative Service no later than close of business on July 31, 2006. This Petition has been timely filed.

8. Citizens seek that the Commission take the following action(s) with respect to the agency's proposed action:

Deny TECO's request for authority to pass costs associated with the "Big Bend Flue Gas Desulfurization System Reliability Program" through the ECRC clause.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-06-0602-PAA-EI, as provided above, and petition the Commission to conduct a formal evidentiary hearing, under the provisions of Section 120.57(1), Florida Statutes.

Respectfully Submitted,

Harold McLean
Public Counsel

s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789
Office of the Public Counsel
c/o The Florida Legislature
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Tallahassee, Florida 32399-1400

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Petition on Proposed Agency Action had been furnished by electronic mail and U.S. Mail on this 21st day of July, 2006, to the following:

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s/Patricia A. Christensen
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