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President of the Senate



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MARCO RUBIO
Speaker of the House of
Representatives



Patricia A. Christensen
Associate Public Counsel

January 24, 2007

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CLERK

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 050958-EI

Dear Ms. Bayo:

Enclosed for filing, on behalf of the Citizens of the State of Florida, is the original and 15 copies of the Direct Testimony of Patricia W. Merchant, John B. Stamberg and Thomas A. Hewson, Jr.

- CMP _____
- COM 5 _____
- CTR org _____
- ECR _____
- GCL 1 _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1 Enclosures
- OTH _____ PAC:ppg

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Patricia A. Christensen
Associate Public Counsel

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Stamberg Hewson
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ORIGINAL

BEFORE THE FLORIDA 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
Dated: January 24, 2007

DIRECT TESTIMONY

OF

PATRICIA W. MERCHANT, CPA

On Behalf of the Citizens of the State of Florida

Harold McLean
Public Counsel

Patricia A. Christensen
Associate Public Counsel

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c/o The Florida Legislature
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Attorneys for the Citizens
of the State of Florida

DOCUMENT NUMBER-DATE

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Attorneys for the Citizens
of the State of Florida

DOCUMENT NUMBER DATE

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DIRECT TESTIMONY
OF
PATRICIA W. MERCHANT, CPA
On Behalf of the Office of Public Counsel
Before the
Florida Public Service Commission
Docket No. 050958-EI

Introduction

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Patricia W. Merchant. My business address is Room 812, 111 West Madison Street, Tallahassee Florida, 32399-1400.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am a Certified Public Accountant licensed in the State of Florida and employed as a Senior Legislative Analyst with the Office of Public Counsel (OPC). I began my employment with OPC in March, 2005.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. In 1981, I received a Bachelor of Science degree with a major in accounting from Florida State University. In that same year, I was employed by the Florida Public Service Commission (PSC) as an auditor in the Division of Auditing and Financial Analysis. In 1983, I joined the PSC's Division of

1 Water and Sewer as an analyst in the Bureau of Accounting. From May, 1989
2 to February, 2005 I was a regulatory supervisor in the Division of Water and
3 Wastewater which evolved into the Division of Economic Regulation.

4

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**
6 **PUBLIC SERVICE COMMISSION?**

7 A. Yes, I have testified numerous times before the PSC. I have also testified
8 before the Division of Administrative Hearings as an expert witness.

9

10 **Q. ARE YOU SPONSORING AN EXHIBIT IN THIS CASE?**

11 A. Yes. I am sponsoring one exhibit, which is attached to my testimony. Exhibit
12 PWM-1 is a summary of my regulatory experience and qualifications.

13

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to discuss the proper regulatory treatment of
16 costs associated with the Big Bend Flue Gas Desulfurization ("FGD") System
17 Reliability Program which Tampa Electric Company ("TECO") seeks to
18 recover through the Environmental Cost Recovery Clause ("ECRC").

19

20 **Q. HAVE YOU REVIEWED TECO'S PETITION FOR APPROVAL OF**
21 **THE FGD SYSTEM RELIABILITY PROGRAM COSTS THROUGH**
22 **THE ECRC?**

23 A. Yes. TECO is requesting \$11,929,000 that it refers to as Big Bend FGD
24 System Reliability (New ECRC Program) Costs should be recovered through
25 the ECRC. It also has requested recovery of \$7,096,000 in costs referred to as

1 the Big Bend Units 1&2 FGD (Existing Program) through the ECRC. The
2 company has also identified \$2,626,000 in costs that it is requesting to be
3 recovered through base rates.

4

5 **Q. ARE YOU PROVIDING TESTIMONY AS TO WHAT COSTS ARE**
6 **PROPERLY RECOVERED IN THE ECRC?**

7 A. Yes. Citizen's witnesses Stamberg and Hewson testify about the specific
8 requested projects and whether those costs are required by new environmental
9 law, regulation or mandate. I am testifying as to the proper regulatory theory
10 of base rate treatment as opposed to clause recovery, specifically through the
11 ECRC in this case.

12

13 **Q. WHAT ARE THE TWO MAIN TYPES OF RATE RECOVERY**
14 **MECHANISMS AVAILABLE TO ELECTRIC UTILITIES?**

15 A. The principal rate recovery mechanisms available for regulated electric
16 utilities are base rates and special cost recovery clauses. Each recovery
17 method has its defined role, and they are designed to work together to provide
18 the utility with rates that are fair, just, reasonable and not unduly
19 discriminatory.

20

21 **Q. PLEASE DESCRIBE THE BASE RATE RECOVERY MECHANISM.**

22 A. Base rates are designed to allow the utility the opportunity to recover its
23 prudent operating costs and a reasonable rate of return on its investment in
24 utility plant. In a base rate case, a test year is used to examine the levels of
25 plant investment and operating costs that represent the levels that will be

1 incurred when the rates go into effect. Adjustments are made to remove any
2 unreasonable amounts and to normalize nonrecurring or extraordinary
3 amounts in the test year. By analyzing the data included in the utility's rate
4 request, the Commission determines the total amount of revenues the utility
5 should be allowed to collect and then designs rates that will generate that
6 revenue figure.

7
8 **Q. HOW DOES THE COMMISSION ALLOW THE UTILITY THE**
9 **OPPORTUNITY TO RECOVER A REASONABLE RATE OF**
10 **RETURN ON ITS INVESTMENT?**

11 A. In setting rates, the Commission determines the overall rate of return on the
12 utility's investment in its utility plant. This overall cost of capital is based on
13 the weighted average cost of debt, equity and other sources of capital. The
14 cost of debt and other sources of capital are determined based on stated cost
15 rates, and the cost of equity is based on the level of profit and business risk for
16 which utility shareholders should be compensated.

17
18 **Q. HOW DOES REGULATORY THEORY ADDRESS THE ISSUE OF**
19 **DESIGNING RATES TO BE SUFFICIENT FOR FUTURE PERIODS?**

20 A. Ratemaking principles recognize that after rates are set, the prospective
21 relationships between costs and revenues will change from those levels used
22 in setting the rates. The level of a particular cost may increase, decrease, or
23 the cost may go away altogether. Costs that were non-existent during the test
24 period may arise after the rates take effect. Projected revenue levels will also
25 vary based on customer growth or changes in consumption or a combination

1 of both. A particular expense level increase does not automatically cause a
2 utility to earn less than its fair rate of return on its investment or to not recover
3 the expense. In order to determine whether an increase in a single cost is
4 affecting a utility adversely, it is necessary to consider the overall relationship
5 of total revenues and total costs.

6

7 **Q. HOW ELSE DOES THE COMMISSION PROVIDE A SAFETY NET**
8 **FOR EARNINGS LEVELS FOR REGULATED UTILITY**
9 **COMPANIES?**

10 A. The Commission sets rates using the mid-point of the authorized rate of return
11 on equity (ROE) and then establishes a range for the ROE. If the utility earns
12 within the range, generally set at 100 basis points on either side of the mid-
13 point, then the utility is earning a fair return on its investment and is
14 recovering its prudent operating costs. If the utility is earning above or below
15 the range on its ROE, then it is over- or under-earning, respectively.

16

17 **Q. PLEASE DESCRIBE THE VARIOUS COST RECOVERY CLAUSES**
18 **AVAILABLE TO ELECTRIC COMPANIES.**

19 A. The cost recovery clauses available to electric companies are the Fuel and
20 Purchased Power Cost Recovery Clause with generating performance
21 incentive factor (Fuel Clause), the Energy Conservation Cost Recovery Clause
22 (ECCR), and the Environmental Cost Recovery Clause (ECRC). The clauses
23 enable companies to recover specific costs on a current basis outside of base
24 rate considerations. Clauses provide guaranteed rate recovery of the specific
25 costs identified for inclusion. They are a departure from the traditional base

1 rate mechanism, under which the rates are designed to provide the utility an
2 opportunity, not a guarantee, to recover its prudent costs and to earn a fair
3 return.

4
5 The fuel clause provides recovery to the utility for the day to day fluctuations
6 in the cost of fuel and other volatile fuel-related costs that cannot be
7 anticipated in base rates. Pursuant to Section 366.82, Florida Statutes, the
8 conservation clause allows utilities to recover costs to implement cost-
9 effective demand side conservation programs. In the case of environmental
10 costs, Section 366.8255, Florida Statutes, mandates the use of a cost recovery
11 clause for qualifying expenditures. All of the cost recovery factors are
12 reestablished annually and include projections for the prospective year. The
13 factors also include a true-up of the current year projections based on actual
14 expenses incurred, with over or under recoveries included in the next year's
15 factor.

16
17 **Q. DO THE COST RECOVERY MECHANISMS CREATE AN**
18 **INCENTIVE FOR THE UTILITY TO REQUEST RECOVERY OF**
19 **NORMAL BASE RATE TYPE COSTS THROUGH A CLAUSE?**

20 A. Yes. The reason is simple. If a cost does not legitimately meet the definition
21 of costs that qualify for a recovery clause, to allow the cost to flow through
22 the clause will result in an unwarranted increase in overall rates borne by
23 customers. This increase in revenues directly benefits shareholders to the
24 detriment of ratepayers. Further, if the utility is earning within the range of its

1 authorized rate of return, allowing recovery through a clause would amount to
2 double recovery.

3

4 **Q. CAN YOU GIVE AN EXAMPLE TO MAKE THIS POINT?**

5 A. Yes. Assume a utility has a rate base (a utility's net investment in utility plant)
6 of \$1 billion, a Commission-authorized fair rate of return with a range of 9%
7 to 11%, and net income of \$100 million. Assume that the Commission must
8 consider the following: a) allow the utility to collect an additional \$1 million
9 expense normally recovered in base rates through the fuel clause or b) require
10 the utility to absorb the expense in earnings achieved from base rates. The
11 achieved rate of return before the additional expense will be 10%, which is in
12 the middle of the authorized range.

13

14 If the utility is allowed to collect the additional expense through the fuel
15 clause, base rates will not change; but the customers will pay additional fuel
16 revenues of \$1 million. However, if the Commission denies the request to
17 recover the expense through the clause, the utility will recover the expense
18 through revenues generated by base rates. The customers' overall bill will not
19 go up—both fuel revenues and base rate revenues will be unchanged. The
20 income for the period becomes \$99 million instead of \$100 million and the
21 return falls from 10% to 9.9%. Inasmuch, the return is still well within the
22 range of the return that the Commission established as fair and reasonable.

23

24 Because special cost recovery clause treatment enables the utility to avoid
25 absorbing the expense through base rate earnings, the utility has a powerful

1 financial incentive to steer as many costs as possible through recovery clauses.
2 For this reason, the Commission should be ever vigilant for claims that new or
3 unusual costs belong in a cost recovery clause as opposed to being absorbed in
4 base rates.

5 **Q. HAS THE COMMISSION ADDRESSED THE APPROPRIATE WAY**
6 **TO DETERMINE WHAT TYPES OF COSTS ARE ALLOWED TO BE**
7 **RECOVERED THROUGH THE ECRC?**

8 A. Yes. By Order No. PSC-94-0044-FOF-EI¹, the Commission outlined the most
9 appropriate way to implement the intent of the ECRC statute as follows:

10 Upon petition, we shall allow the recovery of costs associated
11 with an environmental compliance activity through the
12 environmental cost recovery factor if:

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

20
21 In addition, we shall consider that all costs associated with
22 activities included in the test year of the utility's last rate case are
23 being recovered in base rates unless there have been new legal

¹ Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes, by Gulf Power Company.

1 environmental requirements which change the scope of
2 previously approved activities and caused costs to change from
3 the level included in the test year. If new legal requirements
4 cause an increase, or decrease, in costs from the level included in
5 the test year of the utility's last rate case, the amount recovered
6 through base rates should be determined to be the amount
7 included in the test year. (Order at page 6-7.)
8

9 **Q. DID THE COMMISSION'S ORDER ADDRESS PROJECTS THAT**
10 **WERE IMPLEMENTED AT MANAGEMENT'S DISCRETION?**

11 A. Yes. The Commission found that capital projects that were implemented at
12 management's discretion, but were not necessary to comply with any
13 governmentally imposed environmental compliance mandate, were not
14 appropriate to be included in the ECRC even though the projects were
15 commendable. Nor were projects allowed for compliance with future
16 environmental amendments as the impacts were premature and could not be
17 determined at that time. (Order at page 9)
18

19 **Q. WHAT IS YOUR TESTIMONY AS TO THE REQUESTED**
20 **RECOVERY OF TECO'S BIG BEND FGD SYSTEM RELIABILITY**
21 **PROGRAM COSTS THROUGH THE ECRC?**

22 A. Based on the testimony of OPC witnesses Stamberg and Hewson, five² of the
23 thirteen projects included in TECO's request are not appropriate to be

² TECO requested that one of the projects, the Big Bend Units 3-4 FGD Booster Fan Capacity Expansion, be recovered through base rates not the ECRC. The cost reflected in TECO's petition was \$1.849 million.

1 included in the ECRC. Those projects are not required by any new
2 environmental regulation or environmental mandate and are projects to be
3 implemented at management's discretion. The projects that are inappropriate
4 for recovery through the ECRC are as follows:
5

<u>Project Description</u>	<u>Amounts</u>
Big Bend Units 3-4 Split Inlet Duct	\$116,000
Big Bend Units 3-4 Split Outlet Duct	\$4,829,000
Gypsum Fines Filter	\$2,866,000
Big Bend Units 1-4 Electric Isolation	<u>\$6,600,000</u>
Total Reduction to ECRC Requested Costs	\$14,411,000

6

7 **Q. ARE YOU TESTIFYING AS TO WHETHER TECO'S BASE RATES**
8 **ARE SUFFICIENT TO RECOVER THESE COSTS WHEN THEY ARE**
9 **INCURRED?**

10 A. No, I am not. The purpose of my testimony is to delineate the distinct
11 differences between collecting revenues through base rates or clauses. I
12 believe that to exceed the intended purpose and scope of any of the special
13 cost recovery clauses distorts the overall purpose of cost recovery to the
14 detriment of customers. In as much, the Commission should keep the
15 relationships between these rate categories in mind as it considers TECO's
16 request. In the instant case, either the costs qualify for ECRC or they do not.
17 The Citizen's have provided testimony that some of the requested costs do not
18 belong in the ECRC and as such can only be considered base rate costs.
19 Whether a company needs to file a base rate case is a management decision

1 based on each company's assessment of its levels of investment, projected
2 earnings and perceived business risk. Further, I am by no means suggesting
3 that a base rate case should be triggered by making these plant improvements.

4

5 **Q. ARE YOU RECOMMENDING THAT TECO BE DENIED RECOVERY**
6 **OF ANY OF THE REQUESTED COSTS?**

7 A. No. If TECO has a sufficient level of earnings through base rates to recover
8 these costs, then placing the costs in rate base and operating income allows
9 full recovery by TECO. The argument that not allowing costs that normally
10 are recovered through base rates to be recovered through any clause revenues
11 somehow denies recovery to the utility is false.

12

13 Revenues and expenses are not static. Basic ratemaking assumes that, after the
14 typical test year is constructed and rates are designed, a utility's costs,
15 investment, and revenues will vary over time. In contrast to special cost
16 recovery clauses, base rates are intended to operate generally and on an
17 overall basis. Full cost recovery of a base rate-related item occurs if, after the
18 expenditure is added to the ratemaking equation, the utility's operating
19 revenues continue to exceed expenses and the utility has a positive net
20 income. This is true whether or not the particular item was built into
21 Minimum Filing Requirements or test year assumptions when base rates were
22 last designed.

23

24 **Q WOULD YOUR VIEW OF THE PROPER FUNCTIONS OF BASE**
25 **RATES AND COST RECOVERY CLAUSES CHANGE IF THE**

1 **UTILITY WAS EARNING LESS THAN A FAIR RATE OF RETURN**
2 **AT THE TIME IT INCURS THE COST FOR WHICH IT SEEKS**
3 **RECOVERY THROUGH A CLAUSE?**

4 A. No. If the utility is earning less than the bottom of the range of its authorized
5 rate of return, then its appropriate recourse is to avail itself of the opportunity
6 afforded it by statute to seek an adjustment in base rates. If it does so, then
7 customers and the Commission will have an opportunity to assess the
8 company's condition on an overall basis. Ultimately, the responsibility
9 belongs solely with the utility's management to consider the need to seek base
10 rate relief.

11

12 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

13 A. Yes, it does.

Curriculum Vitae

PATRICIA W. MERCHANT, CPA

Office of Public Counsel
Room 812, 111 West Madison Street
Tallahassee, Florida 32399-1400

Phone: 850-487-8245
Fax: 850-488-4491
E-mail: merchant.tricia@leg.state.fl.us

Professional Experience:

March, 2005 to Present

Office of Public Counsel – Senior Legislative Analyst

In my current position, I perform financial and accounting analysis and reviews, and provide testimony, as required, involving utility filings before the Florida Public Service Commission (or other jurisdictions) as an advocate for the Citizens of the State of Florida.

1981 to February, 2005 - Florida Public Service Commission

2000 to February, 2005

Public Utilities Supervisor – File and Suspend Rate Case Section, Bureau of Rate Filings, Division of Economic Regulation

In this capacity I was responsible for the supervision of 5 to 8 regulatory professionals. This section was responsible for the financial, accounting, engineering and rate review and evaluation of rate proceedings for Class A and B water and wastewater utilities, as well as electric and gas utilities regulated by the Commission. The types of cases included file and suspend rate cases, limited proceedings, overearning investigations, annual report reviews, service availability and tariff filings, rulemaking, and customer complaints. The analysts in this section reviewed utility filings, requested and reviewed Commission staff audits, and generated and analyzed discovery requests. Each analyst coordinated and prepared staff recommendations to the Commission for agenda conferences. As a supervisor, I reviewed the analytical work and edited the written documents of all analysts in this section for proper regulatory theory, grammar and accuracy. I also made presentations to customer groups at Commission staff customer meetings for the rate proceedings to which I was assigned. Staff recommendations were presented at agenda conferences with an introduction of each item, providing a response to comments raised by other parties and addressing the questions of Commissioners. The section also prepared and presented testimony, and assisted in the preparation of cross-examination questions for depositions and formal hearings. In addition to other duties, I provided training in regulatory accounting for new staff in my section as well as training on regulatory and accounting issues for other analysts at the Commission.

1989 – 2000

Regulatory Analyst Supervisor, Accounting Section, Bureau of Economic Regulation,
Division of Water and Wastewater

I supervised 5-7 regulatory accounting analysts. This section performed the same job activities as above specifically for the larger Commission regulated Class A and B water and wastewater companies.

1983 – 1989

Regulatory Analyst – Accounting Bureau, Division of Water and Wastewater

As an accounting analyst, I performed the same job activities as described above for water and wastewater companies in a non-supervisory role.

1981 – 1983

Public Utilities Auditor, Division of Auditing and Financial Analysis

As an auditor in the Tallahassee district of the Commission, I performed financial and accounting audits of electric, gas, telephone, water and wastewater utilities under the Commission's jurisdiction.

Education and Professional Licenses

1981 Bachelor of Science with a major in accounting from Florida State University

1983 Received a Certified Public Accountant license in Florida

Attachments

1 List of Cases in which Testimony was Submitted

Patricia W. Merchant
Submitted Testimony in the Following Cases:

Dockets Before the Florida Public Service Commission:

060658-EI - Petition on Behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to Refund Customers \$143 million.

060362-EI - Petition to Recover Natural Gas Storage Project Costs through Fuel Cost Recovery Clause, by Florida Power & Light Company.

050045-EI - Petition for Rate Increase by Florida Power & Light Company.

991643-SU - Application for Increase in Wastewater Rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.

971663-WS - Application of Florida Cities Water Company, Inc. for a limited proceeding to recover environmental litigation costs.

940847-WS - Application of Ortega Utility Company for increased water and wastewater rates.

911082-WS - Water and Wastewater Rule Revisions to Chapter 25-30, Florida Administrative Code.

881030-WU - Investigation of Sunshine Utilities of Central Florida rates for possible over earnings.

850151-WS - Application of Marco Island Utilities, Inc. for increased water and wastewater rates.

850031-WS - Application of Orange/Osceola Utilities, Inc. for increased water and wastewater rates in Osceola County

840047-WS - Application of Poinciana Utilities, Inc. for increased water and wastewater rates

Cases Before the Division of Administrative Hearings:

97-2485RU Aloha Utilities, Inc., and Florida Waterworks Association, Inc., Petitioners,
vs. Public Service Commission, Respondents, and Citizens of the State of
Florida, Office of Public Counsel, Intervenors

DOCKET NO. 050958-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 24th day of January, 2007, to the following:

James Beasley
Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Ms. Brenda Irizarry
Tampa Electric Company
Regulatory Affairs
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Tampa, FL 33601-0111

Martha Brown
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Associate Public Counsel