

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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**DATE:** April 6, 2009  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Caroline M. Klancke, Senior Attorney, Office of the General Counsel  
**RE:** Docket No. 080317-EI – Petition for rate increase by Tampa Electric Company.  
Docket No. 080318-GU – Petition for rate increase by Peoples Gas System

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RECEIVED--FPSC  
 09 APR - 6 AM 11: 15  
 COMMISSION  
 CLERK

Please place the attached documents in the above-referenced docket files. Thank you.

CMK/kef

DOCUMENT NUMBER-DATE

02998 APR -6 08

FPSC-COMMISSION CLERK

# MCWHIRTER DAVIDSON P.A.

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April 6, 2009

Hon James E. King  
Chairman; Committee on Communications,  
Energy and Public Utilities  
531 Knott Building  
404 S Monroe St  
Tallahassee, FL 32399-1100

In re. CSSB 1154 Section 3.  
"The Carbon Reduction Rider"

Dear Senator King:

I represent three large industrial companies in your senatorial district. My clients use the acronym FIGU, Florida Industrial Gas Users Group. They joined the public council in opposing parts of the TECo/Peoples Gas Rate increase which is presently pending before the Florida Public Service Commission.

One of the issues in the case [#55] is Peoples request for a carbon reduction rider. This rider is opposed by consumer advocates and probably will be opposed by the FPSC staff when it makes its recommendation because it is bad law [according to *§366.06 Florida Statutes*] and bad regulatory policy to require customers to pay a utility a profit on a utility investment that does not serve them; before the investment is made and even if the utility is already earning more than it is legally authorized to earn.

My clients are told by TECo/Peoples that this rider may not directly affect them, but they never the less oppose the rider because the bad policy will adversely affect their employees and customers in Jacksonville and all the other residential and small business customers of Peoples Gas located throughout the state.

MCWHIRTER DAVIDSON, P.A.

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FIGU opposed the rider on factual and legal grounds. The legal grounds were that the rider is not authorized by law. TECo/Peoples now seeks to cure that problem belatedly by asking you to grant a legislative rate increase without knowledge of the facts and adverse financial impact of the rider.

Here is part of what the Public Counsel said in his brief.

The evidence in this case has exposed a disturbing trend of uncontrolled capital spending on real estate developments which have not materialized or proven out. This phenomenon has swollen the company's ratebase and a previously steady ratio of revenue producing capital to customer additions has tripled and nearly quadrupled over the last two years.

In essence the only thing that the CR rider would do in this current situation is to more quickly and more frequently place the risk of misjudgment and economic downturn on the general body of customers. Given the current state of the economy and real estate market, now is certainly not the time to implement an experimental rider mechanism that would not have adequate checks on company spending in speculative ventures.

Here is part of what FIGU said on the subject in its brief.

"The Gas System Reliability Rider and Carbon Reduction Rider are bad because they provide a return on a future investment. These cost recovery riders are not authorized by law. The expenditures are not of the type that prevent the utility from earning a return on its investment as a result of regulatory lag and finally as the staff pointed out in the recent TECo rate case agenda they deprive the Commission of the opportunity to evaluate the return on cost recovery investments in conjunction with other things that are going on at the utility. If the riders are adopted the Commission will be required to use tunnel vision. It cannot deny the return because the utility is presently over earning, or sales have increased or because major components of the overall rate base investment have been recovered from customers through a depreciation charge with no reduction in rates. The new PGS cost recovery investments will be considered on short notice at the same time

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over \$8 billion dollars in other cost recovery items are before the Commission. PGS proposes to add its phantom forecasted investments to the rate increase potpourri where they will receive truncated review at best. If successful PGS will begin earning a return before any investment is made.”

You and your committee may not have had the opportunity to consider the underlying factual circumstances that militate against the carbon reduction rider when your committee approved the new amendment to the renewable energy bill last week. I thought you would like to know how it will affect your constituents and why consumer advocates think it is a bad idea.

Sincerely yours

s/ John W. McWhirter, Jr  
John W. McWhirter, Jr.

EC Committee members

Hon Matthew Carter

Hon. J. R. Kelly / Charles Rehwinkel

Ansley Watson, Esq

Caroline Klancke, Esq

Catherine Fleming, Esq

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