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090368-EI

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Sent: Tuesday, December 29, 2009 3:55 PM
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Subject: Docket No. 090368-EI
Attachments: FIPUG Protest of and Complaint Regarding Order No. PSC-09-0842-PCO-EI 12.29.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman
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- b. This filing is made in Docket No. 090368-EI, In re: Review of the continuing need and cost associated with Tampa Electric Company's 5 Combustion Turbines and Big Bend Rail Facility.
- c. The document is filed on behalf of Florida Industrial Power Users Group.
- d. The total pages in the document are 8 pages.
- e. The attached document is FIPUG's Protest of and Complaint Regarding Order No. PSC-09-0842-PCO-EI.

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DOCUMENT NUMBER-DATE

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12/29/2009

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of the continuing need and
Cost associated with Tampa Electric
Company's 5 Combustion Turbines and
Big Bend Rail Facility /

Docket No. 090368-EI

Filed: December 29, 2009

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
PROTEST OF AND COMPLAINT REGARDING ORDER NO. PSC-09-0842-PCO-EI**

The Florida Industrial Power Users Group (FIPUG), by and through undersigned counsel, pursuant to sections 120.569 and 120.57, Florida Statutes, and rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby protests and files this Complaint in regard to Order No. PSC-09-0842-PCO-EI (Order), issued December 22, 2009. As grounds therefore, FIPUG states:

AGENCY AFFECTED AND DOCKET

1. The name and address of the affected agency is:

The Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
The Docket No. is: 090368-EI

PETITIONER'S INFORMATION

2. The name and address of Petitioner is:

Florida Industrial Power Users Group
c/o Keefe Anchors Gordon & Moyle, PA
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Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788

3. Copies of all correspondence, pleadings, notices, orders and other documents in this docket should be provided to:

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NOTICE OF RECEIPT OF ACTION

4. FIPUG received notice of this proceeding through receipt of the Commission's Order.

BACKGROUND

5. On April 30, 2009, the Commission issued Order No. PSC-09-0283-FOF-EI (rate case order), the final order in Tampa Electric Company's (TECO) rate case. The rate case order granted TECO a rate increase in 2009 and a second increase (step increase) in 2010. Despite challenges to the step increase, including the lack of due process surrounding it, the step increase was confirmed in Order No. PSC-09-0571-FOF-EI (reconsideration order).¹

6. On October 12, 2009, TECO filed a Petition, not in its rate case, but in a separate docket seeking to demonstrate compliance with the conditions in the reconsideration order and to gain approval for collection of the step increase beginning January 1, 2010. TECO sought to show that it had complied with the prerequisites to collection of the step increase and that the amount it sought to collect was "consistent with the approved cost of service methodology" approved in the rate case.

7. On December 1, 2009, the Commission considered Staff's recommendation on TECO's petition in this docket. The Commission approved Staff's recommendation and authorized TECO to implement and collect a revised step increase amount, subject to refund,

¹ Both orders are on appeal to the Florida Supreme Court.

while setting the entire matter for hearing. The Commission approved Staff's request to "administratively approve" the tariffs when they were refiled, if they conformed to the rate case order.

8. In addition, the Commission voted to set this matter for hearing as it found it likely that the issuance of a Proposed Agency Action (PAA) Order would result in a protest. (Order at 6). Had the Commission followed the normal PAA procedure, the allocation of the step increase, as well as the need for the combustion turbines (CTs) and the operational status of the CTs and railroad facility, would have been included in the PAA. Thus, the allocation issues described herein are part of the other issues the Commission will consider at hearing.² Further, there is no prejudice to any party as the Commission has already ordered that all money TECO collects will be subject to refund. (Order at 6).

9. In the Order, the Commission did not approve the amount TECO sought to collect and required TECO to refile the tariffs, thus resulting in a denial of the tariffs.³ The Order addresses the allocation of the step increase and states:

The Final Order clearly specified that such costs associated with any step increase shall be *allocated to rate classes consistent with the approved cost of service methodology, so there is no dispute on how the dollars will be allocated to rate classes*. In its petition, TECO proposes a fixed percentage increase in the demand and energy charges for all rate classes to accomplish the increase. We agree with TECO that it is appropriate to adjust rates to reflect any approved increase. Thus, we authorize our staff to administratively approve the revised tariffs to be filed on or before December 11, 2009.... *[This approval] involve[s] no discretionary decisions by our staff*.

(Order at 6, emphasis supplied).

² Further, a party may always file a complaint regarding a tariff. *See, Citizens v. Wilson*, 567 So.2d 889 (Fla. 1990).

³ The tariffs were filed on December 7, 2009 and subsequently administratively approved. Neither the tariff filing nor the approval is shown in the docket in this matter.

10. However, there is a dispute regarding whether TECO has allocated the step increase in accord with the approved cost of service methodology. It is FIPUG's position that TECO did not allocate the step increase in a manner consistent with the approved cost of service methodology and that the Staff has inappropriately applied discretion in approving the tariffs.

STATEMENT OF SUBSTANTIAL INTERESTS

11. FIPUG is an ad hoc association consisting of industrial users of electricity in Florida. The cost of electricity constitutes a significant portion of FIPUG members' overall costs of production. FIPUG members require adequate, reasonably-priced electricity in order to compete in their respective markets.

12. FIPUG was an intervenor in the TECO rate case⁴ and is an intervenor in this docket.⁵

13. FIPUG's substantial interests will be directly affected by the Commission's decision in this proceeding and are the type of interests that this proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981).

DISPUTED ISSUES OF MATERIAL FACT AND LAW

14. FIPUG's allegations of disputed issues of material fact and law include, but are not limited to, the following:

- a. TECO's proposed allocation of the costs of the CTs and rail facility is inconsistent with the approved cost of service methodology;
- b. The step increase translates into an impermissible revenue increase for the IS class. The IS class should have received a decrease in the rate case, but for the gradualism

⁴ Docket No. 080317-EI.

⁵ Order No. PSC-09-0758-PCO-EI.

policy of the Commission that no class receive a decrease. In fact, the IS class is now subsidizing other classes by over \$6 million. TECO's implementation of the step increase will further increase IS base revenues by \$1.3 million. Given that the IS class is already subsidizing other classes by over \$6 million, TECO's proposal would be an impermissible increase of the IS class;

c. The step increase for the IS class proposes to increase the energy charge by a higher percentage than the demand charge. This is also inconsistent with the approved cost of service methodology because the investment in question is primarily demand related. Even ignoring the nature of the investment, the approved cost of service methodology assigns 75% of the costs as demand-related and 25% of the costs as energy-related. Thus, no less than 75% of the increase should be recovered in the demand charge

d. The tariffs should not be administratively approved as it is not the case that there is "no dispute" as to how the costs should be allocated to the rate classes. Further, Staff has inappropriately exercised discretion in approving the tariffs.

STATEMENT OF ULTIMATE FACTS

15. Without waiving or relinquishing the right to allege additional ultimate facts should they become known through discovery or otherwise, FIPUG's allegations of ultimate facts include the following:

a. TECO's step increase is inconsistent with the cost of service methodology approved in TECO's rate case;

b. TECO's implementation of the step increase ignores the application of the principle of gradualism, which the Commission applied in the TECO rate case, and unfairly results in the IS class subsidizing other classes by more than the step increase now being implemented;

- c. The IS class should receive no increase;
- d. If the IS class does receive an increase, at least 75% of the increase should be recovered in the demand charge.
- e. The Staff should not be permitted to administratively approve the TECO tariffs as there is a dispute as to whether the tariffs comport with the rate case order and the Staff has exercised impermissible discretion.

**STATEMENT OF SPECIFIC RULES AND STATUTES REQUIRING
REVERSAL OF THE AGENCY'S DECISION**

- 16. FIPUG is entitled to relief pursuant to:
 - a. Sections 120.569 and 120.57, Florida Statutes, which entitle FIPUG to a hearing when its substantial interests are affected as they are in this matter;
 - b. Sections 366.04, 366.041, 366.05, 366.06, Florida Statutes, which require that the Commission set just and reasonable rates.

RELIEF REQUESTED

WHEREFORE, FIPUG requests that:

- a. The Commission require TECO to revise its tariffs so that the IS class receives no step increase;
- b. If a step increase is applied to the IS class, at least 75% of the increase should be recovered in the demand charge;
- b. The Commission set this matter for evidentiary hearing; and
- c. The Commission grant such other relief as appropriate.

s/Vicki Gordon Kaufman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the FIPUG's Protest of and Complaint Regarding Order No. PSC-09-0842-PCO-EI has been furnished by electronic mail and U.S. mail this 29th day of December, 2009, to the following:

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