

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-

DATE: January 28, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Wu) *SW CH*
Office of the General Counsel (Brown, Williams), *CO*
MCB APW JB *@*

RE: Docket No. 090508-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

AGENDA: 02/09/10 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Klement

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090508.RCM.DOC

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Case Background

On November 12, 2009, Tampa Electric Company (TECO or Company) petitioned the Florida Public Service Commission (Commission) for approval of a Greenhouse Gas (GHG) Reduction Program and the recovery of the costs of this program through the Environmental Cost Recovery Clause (ECRC). TECO petitioned the Commission pursuant to Section

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366.8255, Florida Statutes (F.S.), and Commission Order Nos. PSC-94-0044-FOF-EI and PSC-94-1207-FOF-EI.¹

On September 22, 2009, the U.S. Environmental Protection Agency (EPA) enacted a new rule, Mandatory Reporting of Greenhouse Gases, 40 CFR Parts 86, 87, 89 et al. The rule requires the reporting of GHG emissions from large sources and suppliers, effective January 1, 2010, in preparation for the first annual GHG report, which is due March 31, 2011. It is intended to collect accurate and timely emissions' data to inform future policy decisions. This rule is supported by the Florida Climate Protection Act, Section 403.44, F.S.

The nationwide GHG emissions mandatory reporting rule will impact TECO's generation fleet, components of its transmission and distribution system, and its service vehicles. According to the rule, TECO must begin collecting GHG emissions' data effective January 1, 2010, to establish a baseline inventory to report to the EPA.

The costs for which TECO is seeking ECRC recovery are for operation and maintenance (O&M) expenditures associated with purchasing monitoring equipment and software to establish the GHG emission testing platform. The initial cost is \$100,000, with an annual software licensing fee of \$30,000. At the time of filing this petition, TECO expected to begin incurring costs associated with the program in December 2009. As stated in the petition, these costs will be included in TECO's 2009 ECRC True-Up, which will be filed in April 2010. The Company is not requesting a change in its projected ECRC factors for 2010. Instead, the Company has proposed to include in its 2010 Actual/Estimated True-Up filing the program costs incurred or projected to be incurred during 2010. Beyond 2010, the Company will include projected program costs in the appropriate ECRC projection filing. The Company has agreed that all program expenditures will be subject to audit by the Commission.

The Commission has jurisdiction over the subject matter of this petition pursuant to Section 366.8255, F.S. Electric utilities may petition the Commission to recover projected environmental compliance costs required by environmental laws or regulations. Section 366.8255(2), F.S. 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), F.S. 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), F.S.

¹ Order No. PSC-94-0044-FOF-EI, issued on January 12, 1994, in Docket No. 930613-EI, In Re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, F.S. by Gulf Power Company; Order No. PSC-94-1207-FOF-EI, issued on October 3, 1994, in Docket No. 940042-EI, In Re: Environmental Cost Recovery Clause.

Discussion of Issues

Issue 1: Should the Commission approve TECO's petition for approval of the GHG Reduction Program and the recovery of the costs of this program through the ECRC pursuant to Sections 366.8255 and 403.44, F.S.?

Recommendation: Yes. As proposed, TECO's GHG Reduction Program complies with the statutory requirements specified in Sections 366.8255 and 403.44, F.S. (Wu, Brown, Williams)

Staff Analysis: By Order No. PSC-08-0775-FOF-EI,² this Commission approved for cost recovery through the ECRC the GHG Reduction Program requested by Florida Power & Light Company, the GHG Inventory and Reporting Program requested by Progress Energy Florida, Inc., and the Annual Climate Registry Project requested by Gulf Power Company, pursuant to Sections 366.8255 and 403.44(3), F.S. TECO anticipated its requirement to initiate a GHG reduction program and notified the Commission by letter dated July 21, 2008. However, the Company did not request that the Commission approve such a program for cost recovery during the 2008 ECRC annual hearing. This decision was based on TECO's interpretation of Section 403.44(4), F.S., which states that the Florida Department of Environmental Protection (FDEP) "shall establish the methodologies, reporting periods and reporting systems that shall be used when major emitters report to the climate Registry." TECO anticipated that the FDEP would develop the reporting procedures which would require TECO to incur costs in 2009. Since the FDEP did not take such action, TECO believed that it could not take action and incur costs.

The recent environmental requirement that triggered TECO's petition for approval of the GHG Reduction Program was the EPA's Mandatory Reporting of Greenhouse Gas Rule, signed on September 22, 2009, and effective on December 29, 2009. Reporters must begin collecting data on January 1, 2010, and the first annual report is due on March 31, 2011, for GHG emitted or products supplied during 2010. The rule requires the reporting of annual emissions of carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons and other fluorinated gases as defined in 40 CFR part 98, subpart A. In addition, pursuant to Section 403.44(5), F.S., the FDEP is not to adopt a GHG reduction program until after January 2010.

Through the GHG Reduction Program, TECO will have the ability to report emissions according to the Climate Registry protocol or the EPA GHG reporting requirement. TECO asserted that since the key step outlined in Section 403.44(4), F.S., has not been taken, nor is it currently contemplated by the FDEP, the Company is not participating in the Climate Registry at this time. However, the Company will begin collecting emissions data in January 2010, to comply with the EPA Mandatory Reporting of GHG Rule's first annual reporting date of March 31, 2011. There are no costs associated with the reporting requirements with the EPA, while the Climate Registry currently requires a \$10,000 annual membership fee.

TECO's GHG Reduction Program consists of three major tasks: (1) project planning, solution design and data discovery; (2) solution configuration and deployment; and (3) project management and closure. The estimated completion date of the program is approximately 60

² Order No. PSC-08-0775-FOF-EI, issued on November 24, 2008, in Docket No. 080007-EI, In Re: Environmental Cost Recovery Clause.

days following kick-off of the program. The Company has projected \$100,000 for initial O&M costs, which consists of approximately \$70,000 in services to configure the program to TECO's specific system and \$30,000 in software licensing fees. TECO has selected the software and associated solutions, which the Company indicates have been demonstrated to meet or exceed the requirements of the Climate Registry and other registries by companies with similar emission profiles. The Company plans to use in-house resources for the data collection associated with the program. The scope of the program does not include third-party verification of GHG emissions. The Company has indicated that it will not seek third-party verifiers until such time that emissions are reported pursuant to the Climate Registry or other registry requirement; however, the selected software has a built-in mechanism that can be used by third-party verifiers, if needed.

The GHG Reduction Program is a compliance activity associated with the requirements of the Clean Air Act Amendments. The Company has, therefore, proposed that the O&M expenditures associated with the program be allocated to rate classes on an energy basis. This is consistent with the Commission's ruling on other utilities' GHG reduction-related programs in Order No. PSC-08-0775-FOF-EI.³

The GHG Reduction Program meets the criteria for ECRC cost recovery established by the Commission by Order No. PSC-94-0044-FOF-EI,⁴ in that:

- (a) all expenditures will be prudently incurred after April 13, 1993;
- (b) the activities are legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and
- (c) none of the expenditures are being recovered through some other cost recovery mechanism or through base rates.

In conclusion, staff recommends that TECO's petition for approval of the GHG Reduction Program and its ECRC recovery should be granted pursuant to Sections 366.8255 and 403.44, F.S. The O&M costs associated with the program should be allocated to the rate classes on an energy basis.

³ Order No. PSC-08-0775-FOF-EI, issued on November 24, 2008, in Docket No. 080007-EI, In Re: Environmental Cost Recovery Clause.

⁴ Order No. PSC-94-0044-FOF-EI, issued on January 12, 1994, in Docket No. 930613-EI, In Re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, F.S. by Gulf Power Company.

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. (Brown, Williams)

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, 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.