

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

123 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

July 28, 2010

RECEIVED - FSC

10 JUL 28 PM 12:50

COMMISSION
CLERK

HAND DELIVERED

100000-DT

Ms. Ann Cole, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: UNDOCKETED - Initiation of Rulemaking to Adopt Rules 25-6.0431 and 25-7.0391, F.A.C., Relating to Application for Limited Proceedings, and to Amend Rule 25-22.0406, F.A.C., Concerning Notice and Public Information Requirements

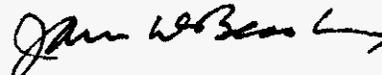
Dear Ms. Cole:

Enclosed for filing in the above-styled matter are the original and ten (10) copies of Tampa Electric Company's Post-Workshop Comments as a follow up to the matters discussed at the Commission's rule development workshop conducted June 23, 2010.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosure

cc: Kathryn Cowdery (w/enc.)
Charles Rehwinkel (w/enc.)
Vicki Kaufman (w/enc.)
Dianne Triplett (w/enc.)
John Butler (w/enc.)
Russell Badders (w/enc.)

DOCUMENT NUMBER-DATE

06138 JUL 28 09

FPSC-COMMISSION CLERK

- COM _____
- APA _____
- ECR 2
- GCI 8
- RAD _____
- SSC _____
- ADM _____
- OPC _____
- CLK _____

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Rulemaking to Adopt)
Rules 25-6.0431 and 25-7.0391, F.A.C.,)
Relating to Application for Limited)
Proceedings, and to Amend)
Rule 25-22.0406, F.A.C., Concerning)
Notice and Public Information)
Requirements)
_____)

UNDOCKETED

FILED: July 28, 2010

**TAMPA ELECTRIC COMPANY'S
POST-WORKSHOP COMMENTS**

Tampa Electric Company (“Tampa Electric” or “the company”) appreciates the opportunity to file comments in the above-referenced matter. The comments discussed below are offered for the Commission’s consideration.

Rules 25-6.0431 and 25-7.0391, F.A.C., Application for Limited Proceedings

Section 366.076, Florida Statutes (“the Statute”), gives the Commission broad authority to conduct limited proceedings “to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates.” The Statute clearly permits the Commission or a petitioner to initiate a limited proceeding on any matter within the Commission’s jurisdiction. The Commission staff’s draft rule appears to address limited proceedings involving rate changes initiated by utilities. Tampa Electric believes the rule should address all filings under the Statute, including those that may not affect rates.

The broad nature of the Statute suggests that, if the Commission believes it is necessary to adopt a rule associated with the Statute, such a rule should prescribe the procedure for requesting a limited proceeding and describe the filing requirements only in a general sense.

DOCUMENT NUMBER-DATE

06138 JUL 28 0

FPSC-COMMISSION CLERK

Prescribing detailed filing requirements is impractical given the variety of matters that could be addressed in such a petition, thereby likely hindering attempts to provide the Commission with useful information on which to base its decision. For the most part, Tampa Electric believes the staff has provided a reasonable description of the types of information to be included with a filing; however, it should be clarified that the information is required only to the extent it is relevant to the filing.

The Commission should refrain from placing limitations on the scope of limited proceeding filings or specifying when it is inappropriate for a petitioner to request a limited proceeding. Such limitations would be inconsistent with the plain statutory authorization that “the Commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction.” Tampa Electric supports allowing the petitioner to propose the scope of the proceeding and for the Commission, with input from the petitioner and parties, to exercise its authority to determine the issues to be considered based on the unique facts and circumstances of each case.

Tampa Electric has attached specific recommended changes in type-and-strike format that are consistent with the comments expressed above, with some explanatory comments for each such proposed change.

Rule 25-22.0406, F.A.C., Notice and Public Information Requirements

Tampa Electric is in general agreement with the changes included in staff’s draft rule. The changes for the most part are reasonable requirements relative to providing notice and public information.

The company has a concern relative to the proposed procedure for providing customer notices. Subsection (5) requires notifications to customers no less than 14 days and no more than 30 days prior to the first scheduled service hearing or customer meeting. Tampa Electric would be unable to comply with this requirement within the 16-day window unless it incurred the substantial expense of a separate mailing. Tampa Electric suggests that the window for providing customer notice be expanded to allow companies to include notices in customer bills.

Also, by tying the time frame for customer notice to dates for customer service hearings or customer meetings, the rule creates the presumption that the Commission will hold service hearings or customer meetings with all limited proceedings. While it may be appropriate to hold service hearings or customer meetings in some cases, the matter(s) at issue in a limited proceeding may not necessarily warrant the expense of holding such meetings. Tampa Electric suggests simply requiring companies to provide notice at least 14 days prior to the service hearing or customer meeting, if service hearings have been scheduled. This approach is consistent with the customer notice requirement relative to the technical hearing when a hearing is requested.

Finally, Tampa Electric recommends changing the word “complaints” to “comments” in paragraphs (2)(e)7. and (3)(b)7. The company believes encouraging customers to submit “comments” regarding the company’s service is a more balanced approach that would invite customers to provide the Commission with information about favorable service as well.

Tampa Electric Company's Recommended Changes to Staff Draft of Rule 25-6.0431, F.A.C.

Rule Provision	Comment
25-6.0431 Application <u>Petition</u> for a Limited Proceeding	
(1) Each application <u>petition</u> for a limited proceeding shall provide <u>contain</u> the following general information to the Commission:	Subsection (1) requires any petition for limited proceeding to include general information required for all petitions for limited proceedings.
<p>(a) The name of the applicant and the address of the applicant's principal place of business <u>All matters required to be included in a petition under Rule 28-106.201, Florida Administrative Code (Initiation of Proceedings);</u></p>	<p>Rule 28-106.201, F.A.C. requires:</p> <ul style="list-style-type: none"> • The name and address of each agency affected and each agency's file or identification number, if known; • The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; • A statement of when and how the petitioner received notice of the agency decision; • A statement of all disputed issues of material fact. If there are none, the petition must so indicate; • A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; • A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and • A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.
<p>(b) The number(s) of the Commission order(s), in which the Commission most recently considered the applicant's base rates; <u>A detailed statement of the reason(s) why the limited proceeding has been requested and why a limited proceeding is the appropriate type of proceeding for consideration of the requested relief.</u></p>	Paragraph (1)(b) requires each petition to include a detailed statement of the requested relief and an explanation of why a limited proceeding is appropriate for consideration of the request.

CODING: Words underlined are additions; words in struck through type are deletions from existing law.

Tampa Electric Company's Recommended Changes to Staff Draft of Rule 25-6.0431, F.A.C.

Rule Provision	Comment
_____ (e) The addresses within the service area where the application is available for customer inspection during the time the application is pending.	The requirement to maintain copies of the application for public inspection duplicates a similar provision in the Staff draft changes for Rule 25-22.0406(3)(b)1., F.A.C.
(2) The following minimum information shall be filed with the utility's application for limited proceeding: In addition to the foregoing, a petition by an investor owned electric utility for a limited proceeding involving a change in rates shall include:	Subsection (2) addresses information required for limited proceedings in which the petitioner is requesting a change in rates.
(a) A detailed statement of the reason(s) why the limited proceeding has been requested. The number(s) of the Commission order(s) in which the Commission most recently considered the petitioner's base rates.	Paragraph (2)(a) requires references to most recent rate case orders in limited proceedings involving rate changes.
_____ (b) An explanation as to whether any change in cost of service may reasonably be postponed or phased in such that an immediate change in rates is not necessary.	Paragraph (2)(b) requires a utility to include a statement regarding why the change in rates could not be avoided by postponing or phasing-in costs as opposed to being a stated condition under which limited proceeding relief would be inappropriate.
_____ (3) Each petition by an investor owned electric utility for a limited proceeding shall provide the following information to the extent the requested information is applicable to the filing:	Subsection (3) requires petitions for limited proceeding to include certain specific information only when applicable to the specific relief requested.
(b)(a) If the utility's application includes a request for recovery of plant in service, accumulated depreciation and depreciation expense, a schedule that provides the specific rate base components for which the utility seeks recovery on both a system and jurisdictional basis. Supporting detail shall be provided for each item requested, including: 1. The actual or projected costs(s); 2. The date the item was, or is projected to be, placed in service; 3. Any corresponding adjustments that are required as a result of adding or removing the requested component(s) from rate base, which may include retirement entries; 4. All supporting detail by primary account as defined by the Uniform System of Accounts, in accordance with Rule 25-6.014, F.A.C.; and _____ 5. Any other relevant supporting information.	Paragraph (3)(a) requires information related to recovery of plant-in-service only if the filing includes such a request. The requirement in paragraph (3)(a)5. is deleted since the petitioner would provide "other relevant supporting information" to the extent necessary to justify the request.

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

Tampa Electric Company's Recommended Changes to Staff Draft of Rule 25-6.0431, F.A.C.

Rule Provision	Comment
<p>(e)(b) If recovery is being requested for any <u>capital</u> costs, a calculation of the weighted average cost of capital shall be provided for the most recent twelve-month period, using the mid-point of the range of the last authorized rate of return on equity, the current embedded cost of fixed rate capital, the actual cost of short-term debt, the actual cost of variable cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the utility;</p>	<p>Paragraph (3)(b) requires information related to recovery of capital costs only if the filing includes such a request. The rule should not require the cost of capital to be based on the mid-point of the range of the last authorized rate of return on equity since the limited proceeding statute does not require requests to be based on the authorized return on equity.</p>
<p>(e)(c) If the utility is requesting recovery of operating expenses, the following information shall be provided on both a system and jurisdictional basis;</p> <ol style="list-style-type: none"> 1. A detailed description of the expense(s) requested; 2. The total cost by primary account pursuant to the Uniform System of Accounts; 3. Supporting documentation or calculations; and 4. Any allocations that are made between systems, affiliates or related parties. If allocations are made, submit full detail that shows the total amount allocated, a description of the basis of the allocation methodology, the allocation percentage applied to each allocated cost, and the workpapers supporting the calculation of the allocation percentages. 	<p>Paragraph (3)(c) requires information related to recovery of operating expenses only if the filing includes such a request.</p>
<p>(e)(d) Calculations for all items or actions that will create cost savings or revenue impacts from the implementation of the requested cost recovery items;</p>	
<p>(f)(e) A calculation of the <u>proposed revenue change</u>;</p>	
<p>(g) Schedules for the most recent twelve-month period showing that, without any increased rates, the utility will earn below its authorized rate of return, in accordance with Section 366.071, F.S. The schedules shall consist of a rate base, net operating income, and cost of capital schedule with adjustments to reflect those consistent with the utility's last rate proceeding;</p>	<p>The limited proceeding statute does not provide that relief can only be granted if not granting the relief would result in the company earning below its authorized rate of return. A better approach would be for the Commission to decide that that requested relief is inappropriate after considering the facts and circumstances unique to the case.</p>
<p>(h)(f) Annualized revenues for the most recent twelve-month period using the rates in effect at the time the utility files its <u>application/petition for limited proceeding</u>;</p>	
<p>(i)(g) A schedule showing how the utility proposes to allocate any change in revenues to rate classes;</p>	

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

Tampa Electric Company's Recommended Changes to Staff Draft of Rule 25-6.0431, F.A.C.

Rule Provision	Comment
(j)(h) A schedule of current and proposed rates for all rate schedules, along with workpapers showing how those rates were derived;	
(k)(i) If the limited proceeding is being requested solely to change the current rate structure, <u>the petition shall provide a copy of all workpapers and calculations used to calculate requested rates and allocations between customer classes, and a description of the customer migrations between rate schedules resulting from the restructuring. In addition, the following schedules, which are incorporated herein by reference, from Form PSC/ECR/011-E(2/04), entitled "Minimum Filing Requirements for Investor-Owned Electric Utilities," shall be provided. The schedules can be obtained from the Commission's Division of Economic Regulation.</u>	
1. Schedule E-1, entitled "Cost of Service Study"	
2. Schedule E-6, entitled "Cost of Service Study – Unit Costs, Present Rates"	
3. Schedule E-6b, entitled "Cost of Service Study – Unit Costs, Proposed Rates"	
4. Schedule E-8, entitled "Company Proposed Allocation of the Rate Increase by Rate Class"	
5. Schedule E-13a, entitled "Revenue from Sale of Electricity by Rate Schedule"	
6. Schedule E-13c, entitled "Revenue by Rate Schedule – Calculations"	
7. Schedule E-13d, entitled "Revenue by Rate Schedule – Lighting Schedule Calculations"	
8. Schedule E-14, Proposed Tariff Sheets and Support for Changes"	
(4)(3) In a limited proceeding <u>application petition:</u>	
(a) Each schedule shall be cross-referenced to identify related schedules. Supporting documentation reflecting all calculations or assumptions made shall be filed.	
(b) The original and twenty copies shall be filed with the Office of Commission Clerk. To the extent possible, all filings made electronically or on diskette shall be provided in Microsoft Word format and all	

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

Tampa Electric Company's Recommended Changes to Staff Draft of Rule 25-6.0431, F.A.C.

Rule Provision	Comment
<p>schedules and calculations shall be provided in Excel format with formulas intact and unlocked.</p>	
<p>———— (4) A limited proceeding is inappropriate in the following circumstances: ———— (a) If the utility has the discretion to postpone or phase in any costs such that an immediate rate increase is not necessary; or ———— (b) If the utility's filing includes more than two separate proposals for which recovery is sought and the requested rate increase exceeds five percent of the utility's most recent twelve month annual jurisdictional base rate revenue. Corresponding adjustments for a given proposal are not subject to the above limitation.</p>	<p>The use of the word "inappropriate" is vague and does not stand as a clear statement of the Commission's policy. Also, the requirements in (4)(a) and (b) are inconsistent with the broad authority granted to the Commission by the limited proceeding statute.</p> <p>Subsection (4)(a) is more appropriately included as a statement in Subsection (2). Whether the utility could reasonably postpone or phase-in costs should be an issue in the case rather than a stated condition under which a request for relief is appropriate.</p> <p>Subsection (4)(b) is vaguely worded and appears to impose a threshold percentage for revenue increases that is not contemplated by the limited proceeding statute. The Commission should preserve its authority and make a determination about whether the increase is appropriate based on the merits of the parties' arguments.</p>
<p>Rulemaking Authority: 350.127(2), 366.05, 366.06(1) 366.076(2) F.S. Law Implemented: 366.05, 366.06, 366.076 F.S. History - New:</p>	
<p>Rule 25-6.0431 Clean (6-23-10).doc</p>	

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.