

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: January 26, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Breman, Lee, VonFossen)
Office of the General Counsel (Stern)

RE: Docket No. 050683-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

AGENDA: 02/07/06 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050683.RCM.DOC

Case Background

On September 29, 2005, Tampa Electric Company (“TECO” or “Company”) petitioned for approval of a new Arsenic Groundwater Standard Program for cost recovery through the Environmental Cost Recovery Clause (“ECRC” or “statute”). TECO is proposing the program to comply with new arsenic standards required by the Florida Department of Environmental Protection (“DEP”). The new standards are contained in Chapter 62-550.310, Florida Administrative Code (“F.A.C.”), concerning Drinking Water Standards, Monitoring and Reporting, and Chapter 62-520.420(1), F.A.C., concerning Groundwater Classes, Standards and Exemptions.

Section 366.8255, Florida Statutes, authorizes the Commission to review and decide whether a utility's environmental compliance costs are recoverable through an environmental cost recovery factor. Electric utilities may petition the Commission to recover projected new environmental compliance costs, required by environmental laws or regulations, not included in base rates. 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), Florida Statutes. Only prudently incurred costs may be recovered through the clause. Section 366.8255(2), Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve TECO's petition for the Arsenic Groundwater Standard Program as a new activity for cost recovery through the ECRC?

Recommendation: Yes, Bayside's Arsenic Groundwater Standard Program is eligible for cost recovery through the ECRC. Conditionally, yes, Big Bend's Arsenic Groundwater Standard Program is eligible for recovery. (LEE, BREMAN, STERN)

Staff Analysis: On June 7, 2005, the DEP issued TECO an Industrial Wastewater ("IWW") Facility Permit, Permit Number FLA 184713-006-IWIN, to operate a wastewater treatment system at Bayside Power Station. Attached to the IWW permit is an Administrative Order. The Administrative Order cites the change in the groundwater quality standard for arsenic as the basis of a new compliance requirement. To meet the new arsenic standard, TECO is required to develop and implement a treatment plan, or a "plan of study". The plan of study is required to be submitted to DEP within six months of permit issuance for DEP's approval. TECO's petition for the Arsenic Groundwater Standard Program seeks to recover the costs of developing and implementing the plan of study.

TECO has incurred quarterly monitoring costs to comply with the existing arsenic standard. These ongoing monitoring costs are recovered through base rates, thus, they are not eligible for recovery through the ECRC. Staff has confirmed with TECO that the company does not seek to recover such ongoing monitoring costs through the ECRC.

The new arsenic standard also applies to TECO's Polk Power Station and Big Bend Power Station. According to TECO, Polk Power Station is already in compliance with the new standard. The company anticipates an IWW permit for Big Bend Station to be issued in 2006 which will contain requirements similar to those contained in Bayside Power Station's IWW permit. Based on the assumption that Big Bend's new IWW permit will have a requirement like that of Bayside's, TECO projects the following program costs, which include the actual costs incurred in 2005:

Table 1
TECO's Arsenic Groundwater Standard Program Costs

| Affected Power Plants | O&M Expenses | | |
|-----------------------|---------------|------------------|------------------|
| | 2005 (Actual) | 2006 (Projected) | 2007 (Projected) |
| Bayside | \$21,145 | \$45,000 | \$30,000 |
| Big Bend | 0 | \$51,000 | \$84,000 |
| Total | \$21,145 | \$96,000 | \$114,000 |

The current ECRC factors approved by Order No. PSC-05-1251-FOF-EI, in Docket No. 050007-EI, issued December 22, 2005, In re: Environmental cost recovery clause, do not include the costs associated with TECO's Arsenic Groundwater Standard Program. By this order, the Commission also approved a stipulation regarding Progress Energy Florida's request for recovery of costs to assess groundwater arsenic levels and consultant costs for development of an

arsenic remediation plan at Plants Anclote, Bartow, Hines, and Crystal River. TECO proposes that all activity costs incurred subsequent to the filing of this petition will be included in its ECRC true-up filings and projection filing in 2006.

Although there currently is no administrative order requiring the implementation of the new arsenic standard for the Big Bend Station at this time, staff believes administrative efficiency will be gained by considering the Arsenic Groundwater Standard Program for Bayside and Big Bend at the same time. TECO has shown that there is a high probability that Big Bend will be subject to the new compliance requirements associated with the new arsenic standard in 2006. TECO understands that it will need to provide the IWW permit for the Big Bend Station for verification as a condition for future cost recovery. Such verification can be conducted concurrent with the review and audit activities in the ongoing ECRC docket after the approval of this petition.

Staff believes TECO has shown that its Arsenic Groundwater Standard Program at Bayside is legally required to comply with a new governmentally imposed environmental regulation. The costs of developing the plan of study for Bayside should be found eligible for recovery. After the plan of study is approved by DEP, the costs of implementing the plan of study should be found eligible for recovery through the ECRC.

With respect to Big Bend, TECO has shown that there is a high probability that Big Bend will be required to develop a plan of study as part of its IWW permit renewal. Recovery of the cost of developing the plan of study and implementing it should be found conditionally eligible for approval. Before TECO incurs any costs that it wants to pass through the ECRC, it should provide evidence that Big Bend's new IWW permit requires TECO to develop and implement a plan of study to ensure compliance with the new arsenic standard. Once this condition is met, the costs of developing the study would be eligible for recovery through the ECRC. Once the plan of study is approved by DEP, the costs of implementing it would be eligible for recovery through the ECRC.

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. (STERN)

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.