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: May 10, 2007

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Lee, Breman, Colson, Draper, Slemkewicz)
Office of the General Counsel (Brown)

RE: Docket No. 050958-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company.

AGENDA: 05/22/07 – Regular Agenda – Post hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\050958.RCM.DOC

Case Background

On December 27, 2005, Tampa Electric Company (TECO or Company) petitioned for cost recovery through the Environmental Cost Recovery Clause (ECRC) of the costs associated with a program titled "Big Bend Flue Gas Desulphurization System Reliability Program" (FGD Reliability Program) for improved reliability of the flue gas desulphurization systems (scrubbers) on Big Bend Units 1, 2, and 3.

TECO asserts that the program was designed to comply with its Consent Decree with the United States Environmental Protection Agency (EPA) issued February 29, 2000, which memorializes the settlement of the EPA's complaint regarding TECO's Big Bend Units' compliance with the Clean Air Act. Pursuant to the terms of the Consent Decree, on August 19, 2004, TECO submitted a letter to the EPA indicating that the Big Bend Station would continue to combust coal. This declaration triggered paragraph 40 of the Consent Decree. Under the requirements set forth in sections B and C of Paragraph 40, TECO cannot operate its base load coal plants at Big Bend without scrubbers after 2010 (for Big Bend Units 1 and 2) and 2014 (for Big Bend Unit 3). Sections B and C of Paragraph 40 are as follows:

> B. Availability Criteria. Commencing on the deadlines set in this Paragraph and continuing thereafter, Tampa Electric shall not allow emissions of SO2 from Big Bend Units 1, 2, or 3 without scrubbing the flue gas from those Units and using other equipment designed to control SO2 emissions. Notwithstanding the preceding sentence, to the extent that the Clean Air Act New Source Performance Standards identify circumstances during which Bend Unit 4 may operate without its scrubber, this Consent Decree shall allow Big Bend Units 1, 2, and/or 3 to operate when those same circumstances are present at Big Bend Units 1, 2, and/or 3.
>
> C. Deadlines. Big Bend Unit 3 and the scrubber(s) serving it shall be subject to the requirements of this Paragraph beginning January 1, 2010 and continuing thereafter. Until January 1, 2010, Tampa Electric shall control SO2 emissions from Unit 3 as required by Paragraphs 30 and 31. Big Bend Units 1 and 2 and the scrubber(s) serving them shall be subject to the requirements of this Paragraph beginning January 1, 2013 and continuing thereafter. Until January 1, 2013, Tampa Electric shall control SO2 emissions from Units 1 and 2 as required by Paragraphs 29 and 31.

(EX-2, p. 000030-000031)

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 environmental compliance costs required by environmental laws or regulations, and not included in base rates or other cost recovery clauses. 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. A utility may submit a petition to the Commission describing its proposed environmental compliance activities and projected costs, and if the activities are approved, the Commission "shall allow recovery of the utility's prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof. . . ." Section 366.8255(2), Florida Statutes.

The Commission approved the FGD Reliability Program as eligible for recovery through the Environmental Cost Recovery Clause (ECRC) by Order No. PSC-06-0602-PAA-EI, issued July 10, 2006. The Commission found that the proposed program met the eligibility criteria for ECRC recovery prescribed by section 366.8255, Florida Statutes. The Commission said:

> We find that the costs associated with TECO's proposed program to improve the reliability of the scrubbers at Big Bend are eligible for recovery through the ECRC as environmental compliance costs, 'incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof.'

Thereafter, on July 21, 2006, the Office of Public Counsel (OPC) filed a Petition on Proposed Agency Action objecting to the Commission's PAA order and requesting a formal administrative hearing on the matter. Accordingly, a hearing was conducted on March 5, 2007. Following the hearing, each party filed a post-hearing brief and statement of issues and positions. Staff's post-hearing recommendation on the issues addressed at that hearing are provided below. The Commission has jurisdiction to address this matter by section 366.8255, Florida Statutes.

Discussion of Issues

Issue 1: Are the following projects in Tampa Electric Company's Big Bend FGD System Reliability Program costs or expenses incurred by Tampa Electric in complying with environmental laws or regulations and, therefore, entitled to be recovered under the environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes?

(a) Big Bend Units 1-4 Electric Isolation

(b) Big Bend Units 3-4 Split Inlet Duct and Split Outlet Duct

(c) Gypsum fines filter

Recommendation: Yes, approving these projects as eligible for cost recovery through the ECRC is consistent with the statute and in the public interest. (Lee, Brown, Breman, Slemkewicz)

Position of the Parties:

OPC: (a) The electric isolation project for Big Bend Units 1-4 is not eligible for recovery thorough the ECRC because it is not required to meet an environmental law or regulation. The main function of the proposed electric isolation project is to provide a new transformer for the Induced Draft fans serving the boiler system, which is not an environmental system.

(b) The Big Bend Units 3-4 split inlet duct and outlet duct projects are not eligible for recovery through the ECRC because they are not required to comply with an environmental law or regulation. The scrubber system's original combined duct system design - without the splitting of the inlet and outlet ducts – meets current environmental law. Thus, the split inlet duct and outlet duct projects are discretionary projects not entitled to special recovery treatment.

(c) The gypsum fines filter project is not eligible for recovery through the ECRC because it is not required to comply with an environmental law or regulation. The gypsum fines filter project is being done to make a saleable by-product and reduce landfill costs. As such, while commendable, the cost is not being incurred to comply with an environmental law or regulation.

TECO: Yes. Each of the projects listed under sub issues (a), (b), and (c) of Issue 1 is necessary to comply with environmental laws and regulations and therefore are entitled to be recovered through the Environmental Cost Recovery Clause pursuant to Section 366.8255, Florida Statutes.

Staff Analysis:

OPC's Argument

OPC's position is based on the policy arguments presented by Witness Merchant. Witness Merchant raised a concern over the potential double recovery of normal base rate type costs if eligibility for recovery through the ECRC is not strictly construed. (OPC BR 4, TR 100-102) Ms. Merchant relied on a portion of Order No. 94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI,[1] where the Commission found that a research and development project implemented at the utility's discretion was not necessary to comply with any governmentally imposed environmental compliance mandate, and thus was not eligible for ECRC recovery, notwithstanding the desirability of the project. (TR 104) In essence, OPC contends that for a project to be eligible for ECRC, it must be necessary to comply with a new environmental requirement, and the projects identified in Issue 1, the electric isolation project, the split inlet duct and outlet duct projects, and the gypsum fines filter project,[2] were discretionary and not necessary to comply with a new environmental requirement. (OPC BR 3, TR 104)

OPC's Witness Hewson argues that the requirement in Paragraph 40 of the Consent Decree is not new or different from TECO's existing FGD (scrubber) optimization plans. OPC witnesses Hewson and Stamberg argue that these projects are discretionary and not necessary for scrubber reliability improvement. For the electric isolation project, they argue that the Induced Draft (ID) fans, which will be served by the new transformer 3B, are not dedicated to the scrubber system and the proposed transformer project will have no measurable effect on the reliability of the scrubber system. (TR 131, TR 153-155) For the split inlet duct and outlet duct projects, they argue that these projects have no significant impact on system reliability based on the scrubber system operational history. (TR 131, TR 156-160) For the gypsum fines filter project, they argue that the project is a revamping of the gypsum disposal system to make a saleable byproduct and reduce landfill costs. (TR 132, TR 164) In addition, OPC offers TECO's Quarterly Compliance Report to the EPA regarding activities related to its Consent Decree compliance as further evidence that some of the projects are not required. (TR 127-130)

OPC concludes that the projects associated with the FGD Reliability Program identified in Issue 1 are discretionary and Paragraph 40 of the Consent Decree is not a new environmental requirement, and therefore the projects are not eligible for ECRC cost recovery. OPC does agree, however, that projects associated with the FGD Reliability Program identified in Issue 2 are eligible for cost recovery through the ECRC.

TECO's Argument

TECO's three witnesses testified that the FGD Reliability Program would not be needed and would not be implemented but for the requirements of its Consent Decree with the EPA.

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[1] In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes, by Gulf Power Company.

[2] For clarification staff notes that OPC is contesting eligibility for four projects included in the FGD Reliability Program. Two of those projects, the split inlet duct and split outlet duct projects, are grouped together in sub issue B of Issue 1 above.

(TR 27, TR 210, TR 76) TECO argues that the testimony of OPC's witnesses is fundamentally deficient because they fail to recognize the significant differences in permissible operating parameters before and after the 2010 and 2013 Consent Decree deadlines. (TECO BR 10, TR 221-229) Mr. Smolenski explained the reasons why the requirements of the Consent Decree tie unit generating capability to FGD system reliability. He asserts that Mr. Stamberg's analysis of the individual projects making up the FGD Reliability Program contains errors, exemplified in Mr. Stamberg's analysis of the electrical isolation project in which he completely overlooks the fact that this project is designed to avoid scrubber outages that are allowable prior to the 2010 and 2013 deadlines, but which will cause multiple coal-fired unit outages after those deadlines pass. (TR 228-229)

TECO's rebuttal witness Crouch addresses Mr. Hewson's conclusion that TECO's quarterly reports to the EPA suggest that those projects are not needed to comply with the Consent Decree. She contends that Mr. Hewson's analysis is flawed because he confuses TECO's new program undertaken pursuant to Paragraph 40 of the Consent Decree with the existing optimization plan that was undertaken pursuant to Paragraph 31 of the Consent Decree. Paragraph 31 is entitled Optimizing Availability of Scrubbers Serving Big Bend Units 1, 2, and 3. Subsection A provides:

> As soon as possible after entry of this Consent Decree, Tampa Electric shall submit to EPA for review and approval a plan addressing all operation and maintenance changes to be made that would maximize the availability of the existing scrubbers treating emissions of SO2 from Big Bend Units 1 and 2, and from Unit 3. In order to improve operations and maintenance practices as soon as possible, Tampa Electric may submit the plan in two phases.

(EXH 2, p 000018-000019)

Witness Crouch argues that Mr. Hewson is also not correct in concluding that Tampa Electric's inclusion of the projects as additional capital projects in its quarterly reports to the EPA suggests that those projects were not required by the Consent Decree. She explained that TECO's approach was to err on the side of reporting compliance projects and major capital projects in the quarterly reports in order to obtain protection from further EPA litigation under Paragraph 44 of the Consent Decree, the "safe harbor" provision entitled " Resolution of Future Claims – Covenant not to Sue." In any event, Witness Crouch argues, the wording of the reports does not change the nature of the projects, which would not have been undertaken but for the requirements of Paragraph 40. (TR 206-209)

In its brief, TECO explains that the Consent Decree does not mandate a particular engineering solution to comply with the strict operational requirements of Paragraph 40. Therefore, TECO contends, it has the discretion to design a program that will reasonably and cost-effectively comply with the environmental requirement that the Big Bend units may not operate unscrubbed after 2010 and 2014. TECO argues that this position is consistent with the decision the Commission reached in Order No. PSC-02-1421-PAA-EI, issued October 17, 2002, in Docket No. 020648-EI, In re: Petition for approval of environmental cost recovery of St. Lucie Turtle Net Project for period of 4/15/02 through 12/31/02 by Florida Power & Light

Company. (Turtle Order) In that Order, the Commission allowed recovery of activities related to the installation of a turtle net that were not specifically mentioned in the environmental regulation requiring the net, but were designed to allow the net to operate effectively. TECO states:

> [T]he Consent Decree imposes deadlines in 2010 and 2013 after which Tampa Electric will no longer be able to operate Big Bend Units 1 through 3 unscrubbed. The Consent Decree, like FPL's NRC license, does not presume to prescribe a list of compliance projects to accomplish this mandate. Instead, the Consent Decree leaves it up to Tampa Electric to determine and implement the best means of complying with the deadlines and, at the same time, discharging its statutory obligation to continue providing safe, adequate, reliable and reasonably priced electric service to its customers.

(TECO BR 15-16)

Discussion

As stated in the case background above, 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 environmental compliance costs, required by environmental laws or regulations, not included in base rates or other cost recovery clauses. 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. A utility may submit a petition to the Commission describing its proposed environmental compliance activities and projected costs, and if the activities are approved, the Commission "shall allow recovery of the utility's prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof. . . ." Section 366.8255(2), Florida Statutes.

The Commission first implemented the provisions of section 366.8255 by Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes (Gulf Order). There the Commission identified the criteria required to demonstrate eligibility for cost recovery under the ECRC. The Commission said:

> Upon petition, we shall allow the recovery of costs associated with an environmental compliance activity if:
>
> 1. such costs were prudently incurred after April 13, 1993;
>
> 2. the activity is 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,

3. such costs are not recovered through some other cost recovery mechanism or through base rates.

(Gulf Order, pps. 6-7)

In the Gulf Order the Commission also made other findings that are relevant to the decision to be made in this case. It allowed recovery through the ECRC of Gulf's Environmental Auditing Program as prudent without a particular environmental regulation mandating such a program. (Gulf Order p. 19) It denied recovery of Gulf's Clean Coal Technology program because it was a discretionary research and development project not needed for compliance with any environmental regulations. (Gulf Order p. 18) It allowed recovery for general air quality costs and emission monitoring costs associated with changes in the scope of compliance both with existing environmental regulations and with new environmental regulations. (Gulf Order p. 17) The Gulf Order demonstrates that from the beginning of its administration of section 366.8255, the Commission has applied the statute and its criteria on a case-by-case basis, not formalistically, but with the flexibility to respond reasonably to complex and variable circumstances.[3] This approach is consistent with the broad language of section 366.8255, Florida Statutes, which provides that the Commission shall allow recovery of prudently incurred environmental compliance costs. (emphasis supplied)

As shown in the attached Exhibit A as part of the stipulated position on Issue 2, there are 13 component projects under TECO's FGD (scrubber) Reliability Program, with estimated costs totaling over $21.6 million. Over $2.6 million of the costs are allocated for recovery through base rates. Only the four projects listed under sub issues (a), (b), and (c) of Issue 1 remain contested. (TR 33) The four projects and their estimated costs are summarized below. (TR 105)

Project Name (Abbreviation)	Estimated Costs
Big Bend Units 1-4 Electric Isolation (Electric Isolation)	$6,600,000
Big Bend Units 3-4 Split Inlet Duct (Split Inlet Duct)	$116,000
Big Bend Units 3-4 Split Outlet Duct (Split Outlet Duct)	$4,829,000
Gypsum Fines Filter	$2,866,000
Total at Issue	$14,411,000

3 See also, for example, Order No. PSC-99-1954-PAA-EI, issued October 5, 1999 in Docket No. 990667-EI, In re: Petition by Gulf Power Company for approval of Plant Smith Sodium Injection System as new program for cost recovery through environmental cost recovery clause. (Commission approved the project both to comply with new clean air act amendment Phase II requirements and to maintain compliance with existing air permit requirements); Order No. PSC-98-1764-FOF-EI, issued December 31, 1998, in Docket No. 980007-EI, In re: Environmental Cost Recovery Clause (Commission approved Gulf's additional groundwater monitoring equipment to continue with existing legal requirement because greater treatment capacity was needed. The Commission also approved two additional coal crushers for TECO's Gannon station, even though it could not determine whether the crushers were necessary to comply with the CAAA; "however, it appears that additional crushers at the Gannon station will contribute in the overall efforts to achieve lower NO_x emissions if TECO continues to use PRB coal at Gannon.")

There is no dispute that pursuant to the Gulf Order and later Commission orders implementing section 366.8255, Florida Statutes, only activities that are legally required to comply with a governmentally imposed environmental regulation are eligible for recovery through the ECRC. (TR 33) The policy advocated by OPC with respect to what is legally required, however, appears to be a more restrictive interpretation of the Commission's authority to implement the statute than the language of the statute contemplates. The key elements of OPC's position are that there must be a "new" environmental requirement, that the projects must be "necessary to comply with the environmental requirement," and that recovery of the costs of the projects will not lead to double recovery of costs already provided for in base rates. (OPC BR 3, TR 100-104) These positions track the criteria established in the Gulf Order, but add additional limitations to the application of those criteria.

New Environmental Requirement

Both section 366.8255, Florida Statutes, and the Gulf Order indicate that an environmental requirement is a "new" environmental requirement if the costs associated with its implementation occurred after 1993 and it was enacted, effective, or whose effect was triggered after the company's last test year upon which rates are based. No other time limitations are ascertainable from the statute or the Commission's decisions. The evidence is uncontested that TECO's Consent Decree with the EPA was executed in 2000 and no costs to implement the settlement were incurred before April 13, 1993. It is also clear that TECO's last rate case was filed before the litigation which led to the Consent Decree.[4] This is also evident by the fact that the Commission has already approved other programs triggered by the Consent Decree.[5] (TR 6) Clearly, the Consent Decree has been established as an eligible environmental compliance requirement for TECO pursuant to the statute and the Commission policy outlined by Witness Merchant.

Further, while OPC contests four of the 13 proposed projects as not eligible for recovery through the ECRC because Paragraph 40 of the Consent Decree is not a "new" requirement, (TR 141) it has stipulated to the recovery of the costs of the remaining projects, most through the ECRC. Inherent in that stipulation is the assumption that the Consent Decree is a new legal requirement. OPC cannot logically argue that that requirement is not "new" as to some of the reliability projects, but is "new" for others. OPC's argument fails to take into consideration the language of the Gulf Order criteria, which states that projects are eligible for ECRC recovery if they 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. That is true for the entire Consent Decree, and especially for Paragraph 40. (emphasis supplied)

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[4] See Order No. PSC-93-0758-FOF-EI Approving 1994 Rates for Tampa Electric Company, issued May 19, 1993, in Docket No. 920324-EI, In re: Application for a rate increas by Tampa Electric Company.

[5] See Order No. PSC-05-0502-PAA-EI, issued May 9, 2005, in Docket No. 041376-EI, In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company. (Commission approved the Big Bend Units 1-3 selective catalytic reduction (SCR) Program.)

OPC's Witness Hewson argues that the requirement set forth in Paragraph 40 has been known to TECO since it signed the Consent Decree in 2000, and therefore it cannot be considered a "new" requirement. (TR 141-142) As stated above, however, and as OPC Witness Merchant's testimony confirms, a new requirement is relative to the ECRC implementation date (April 13, 1993) and a company's last base rate test year after which the requirement was enacted, became effective, or whose effect was triggered. (TR 103) It is not determined by whether or for how long the company knew about the requirement.

Witness Hewson also argues that the projects TECO has proposed to comply with Paragraph 40 of the Consent Decree are not new or different from TECO's existing scrubber optimization plans. He states that the existing plans can be modified at any time and the deadlines set forth in Paragraph 40 are essentially the end of a transition period. (TR 140-141) The record indicates, however, that TECO has made substantial efforts to differentiate the activities it has undertaken to implement the two programs. (TR 201-206) The existing scrubber optimization plans were near-term operation and maintenance activities required by Paragraph 31 of the Consent Decree, before the allowance to bypass the scrubbers is phased out by the deadlines set forth in Paragraph 40. (TR 136-139, TR 202) After the bypass allowance is eliminated, any generating units served by the scrubber must be shut down when that scrubber goes down. (TR 216) Therefore, to maintain the same unit availability, scrubber reliability must be improved after the bypass allowance is eliminated. These capital projects are intended to achieve a long term solution not contemplated by the near-term operation and maintenance activities required by Paragraph 31. (TR 202-203)

In addition, the notion that TECO should have considered the requirements in Paragraph 40 and Paragraph 31 of the Consent Decree as one requirement is inconsistent with Commission regulatory policy. Under economic regulation, TECO is required to take prudent and reasonable actions to minimize the environmental compliance cost impact to its customers before funding a project, whether the project is funded through base rates or the ECRC. (TR 86) The cost-benefit analysis of the FGD Reliability Program that TECO conducted demonstrates the program's desirability as a compliance option. It cannot be construed as an indication that the program is driven by its own desirability. Without economic justification, choosing a more stringent and costly environmental compliance option by giving up the allowance to bypass the scrubbers earlier than the deadlines set forth in Paragraph 40 may be deemed imprudent. TECO has provided the cost-benefit analysis to justify the acceleration of some of these projects to coincide with the installation of the SCRs. (TR 218, TR 220)

Necessity of the Projects

Paragraph 40 of the Consent Decree does not include explicit language requiring the 13 reliability projects TECO has proposed or any other specific engineering project to comply with the requirement that the Big Bend Units not operate unscrubbed after 2010 and 2014. Staff therefore agrees with TECO that the principle stated in the Turtle Order applies here. Where the environmental requirement does not detail the specific means to comply with the requirement, the utility is "impliedly required" to implement compliance by the most reasonable and cost effective means. Under this standard the FGD Reliability Program and the four projects in dispute are necessary to comply with the Consent decree.

Nor does staff believe that these projects can be found to be discretionary based on the information TECO did or did not include in its Quarterly Reports to the EPA. The evidence shows that some of the information TECO submitted related to implementation of another section of the Consent Decree, Paragraph 31, and some of the information was submitted to take full advantage of the safe harbor provision of the Consent Decree to protect itself from further litigation with the EPA. Staff agrees with witness Crouch that the wording of the reports does not change the nature of the projects, which would not have been undertaken but for the requirements of Paragraph 40.

With respect to the gypsum fines filter project, the fact that a project may deliver benefits in addition to its intended objective should not be a reason to forgo a project. While the value of the gypsum could increase as a result of the gypsum fines filter project, it does not follow that the project was driven by the desire to produce more saleable gypsum, as Mr. Stamberg asserted. (TR 90, TR 239-240). Commission policy dictates that any increased sales should be credited back to the ratepayer. As Witness Smolenski testified, TECO's customers benefit from revenues derived from the gypsum sales. (TR 92) The record indicates that the gypsum fines filter project is a component of Group C projects that are needed to mitigate the decreased reliability due to operational issues related to the dewatering system.[6] (TR 240-242, EXH 4, Document 1 at p.23-24) These operational issues appear to be the basis of Witness Stamberg's conclusion that the vacuum pump upgrades, another component of the Group C projects, would likely improve future scrubber operation and reliability. (OPC BR 18, TR 164) Witness Stamberg also recognizes the integrated nature of the two projects by noting that both projects appear to make an improved gypsum suitable for sale into the gypsum market. (OPC BR 17-18, TR 164) The fact that he thinks the vacuum pump project is needed regardless of whether it may deliver benefits other than its intended objective only reinforces the conclusion that the same should apply to the gypsum fines filter project.

OPC's position that the electric isolation project and the split inlet duct and outlet duct projects are discretionary is not supported by the record. The current configuration of the Big Bend Station, including the sharing of the common electric power supply, the duct system, and the absorber towers, was designed based on the assumption that TECO would be able to operate generating units 1, 2, and 3 without scrubbing the flue gas. (TR 57, TR 77) After this bypass allowance expires due to the additional restriction imposed by Paragraph 40 of the Consent Decree, scrubber reliability must be improved. (TR 216) Changing the current configuration is an essential component of the scrubber reliability program so that the operational issues of a single generating unit remain isolated and will not affect other units. (TR 218, TR 228) The electric isolation project provides this isolation for the electric power supply system, while the duct reconfiguration provides isolation for the corresponding duct system, which will also isolate the absorber towers for each of the two units. (EXH 4, Document 1)

OPC's Witness Stamberg recognizes existing operational issues related to the electric system and the absorber towers; he also recognizes the need to address those issues in order to improve reliability. (TR 171-172) The operational issues will be further compounded by the restriction imposed by Paragraph 40 of the Consent Decree and the selective catalytic reduction

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[6] Group C projects include both the gypsum fines filter project and the gypsum filter vacuum pump upgrades. (EXH 4, Document 1 at p.23-24)

(SCR) units yet to be installed. (TR 229-231) Staff believes that these projects are needed to mitigate those operational issues. The record supports the conclusion that there is a direct nexus between the projects and the environmental requirements of Paragraph 40 of TECO's Consent Decree.

Potential Double Recovery of Base Rate Items

With respect to Witness Merchant's concern about double recovery, (TR 100-102) approval for ECRC eligibility does not mean guaranteed recovery of all project costs. The Commission has a rigorous annual cost recovery hearing process to ensure that only the actual, incremental costs above bases rates that are reasonably and prudently incurred are recovered through the ECRC. (TR 186-188, 223) An environmental compliance program has to be first determined to be eligible for the ECRC, as this docket was established to do. The annual rate setting process gives full opportunity for all parties to conduct discovery to ensure that only actual, prudently incurred costs that are incremental to base rates are allowed recovery. Cost recovery is not final until the final true-up has been audited first, brought before the Commission and has had the full hearing process. (TR 196)

Further, TECO has removed capital items associated with two projects from the ECRC based on its understanding of Commission policy. (TR 35-36) As a result, new equipment such as booster fans, with an estimated cost of over $2.6 million, will not be recovered through the ECRC because they will replace older equipment already in base rates. (EXH 2) The question for the four projects at issue here is whether there are base rate items that should not be recovered through the ECRC based on the same policy.

The new Induced Draft (ID) fans 3A and 3B and the new transformer 3B that will serve the new ID fan load are identified by OPC's Witness Stamberg as discretionary. (TR 153-155) TECO argues the new transformer 3B is needed as a consequence of the added 12,281 KVA of electrical load due to the new SCR system and the added 12,939 KVA of electrical load due to reconfiguration of the scrubber electrical system. (TR 224-226, EXH 5, Document 1) The existing transformer 3A alone will not be able to handle the load. (TR 225, EXH 5, Document 1) However, due to the conversion to balanced draft operation after installing the ID fans, 3,750 KVA of the existing boiler load will be transferred to the ID fans. (EXH 5, Document 1) This 3,750 KVA load, representing 18 percent of transformer 3B's total connected load, will not be dedicated to pollution control. (TR 225, OPC BR 9) The new transformer 3B will not replace the existing transformer 3A. This is different from the booster fan project where fully depreciated base rate items are replaced with new equipment that is accordingly not included in the ECRC. Staff therefore believes that the new transformer 3B is not a base rate item.

Based on the record, new ID fans 3A and 3B will not replace the existing force draft fans, but part of the boiler process served by the two force draft fans will be transferred to the new ID fans. (TR 224) The 3,750 KVA of the existing boiler load transferred to the ID fans represents close to 20 percent of the total ID fan load of 19,000 KVA. (EXH 5, Document 1) Neither TECO nor OPC has offered any policy suggestion or reasoning regarding partial removal of base rate items based on allocated base rate function. In addition, the record indicates those ID fans are related to a separate SCR program which was approved in 2005. (TR 224)

Staff believes that even though transformer 3B will not be fully dedicated to pollution control it still provides a critical function of electric isolation for the Scrubber Reliability Program and it should not be considered a base rate item. The ID fans are related to a separate ECRC program. Because those ID fans will be added in year 2008, their costs will be part of TECO's projection filings and subject to review in the 2007 hearing process. OPC will have the full opportunity to review additional evidence, and TECO should consider removing a portion of these costs from ECRC to reduce immediate ratepayer impact.

Conclusion

The four projects at issue are part of an integrated program intended to improve scrubber reliability as a compliance option for the requirement imposed by Paragraph 40 of the Consent Decree. The record is clear that absent the reliability program, an alternative compliance option that does not include these four essential component projects will likely result in significant impact to customers in replacement power costs, in addition to the potential impact to the power grid reliability that was not factored into TECO's cost-benefit analysis. (TR 220, TR 229) Therefore, approving these projects as eligible for recovery through ECRC is consistent with the statute and in the public interest.

Issue 2: How should the following remaining projects in Tampa Electric Company's Big Bend FGD System Reliability Program be recovered?

(a) Big Bend Units 1-4 Mist Eliminator Upgrades

(b) Big Bend Units 1-4 On-line Mist Eliminator Wash System

(c) Big Bend Units 1-4 On-line Nozzle Wash System

(d) Gypsum Filter Vacuum Pump Upgrades

(e) Big Bend Units 1-2 Gypsum Blow Down Line

(f) Controls Additions

(g) Big Bend Units 3-4 FGD Booster Fan Capacity Expansion

(h) Big Bend Units 1-2 Recycle Pump Discharge Isolation Bladders

(i) Big Bend Units 1-2 Inlet Duct C-276 Wallpaper

Recommendation: The Commission should approve the stipulated position of the parties referenced below. A copy of the chart referenced by this stipulated position is attached hereto as Exhibit A.

Stipulated Position:

The costs of the projects listed under Issue 2 (which exclude electric isolation, split inlet duct and outlet duct, and gypsum fines filter projects) should be recovered through the Big Bend FGD System Reliability (New) ECRC Program, the Big Bend Units 1 and 2 FGD System Reliability (Existing) ECRC Program and through base rates, allocated among the three methods of recovery in the manner shown in the chart entitled "Big Bend Flue Gas Desulphurization System Reliability Program Recovery of Expenditures-Revised" filed on March 16, 2006 by Tampa Electric, a copy of which is attached hereto and by reference made a part hereof. The allowance or disallowance of costs for recovery through base rates is appropriately decided in a base rate proceeding.

(OPC specifically does not stipulate to the reasonableness or prudence of costs or expenses that are identified as recoverable through base rates or that are subsequently recovered through base rates since issues related to base rate recovery are outside the scope of this petition.)

Staff Analysis: As discussed in Issue 1, these component projects are part of an integrated program intended to improve scrubber reliability as a compliance option for the requirement imposed by Paragraph 40 of the Consent Decree. The record is clear that absent the reliability program, the alternative compliance option will likely result in significant impact to customers in replacement power costs, in addition to the potential impact to the power grid reliability that was not factored into TECO's cost benefit analysis. (TR 220, TR 229) Therefore, approval of these projects to be eligible for recovery through ECRC is consistent with the statute and in the public interest.

Issue 3: Should this docket be closed?

Recommendation: The docket should be closed after the time for filing an appeal has run. (Brown)

Staff Analysis: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.

TAMPA ELECTRIC COMPANY
DOCKET NO. 050958-EI
FILED: 12/27/05
REVISED: 3/16/06

Big Bend Flue Gas Desulfurization System Reliability Program
Recovery of Expenditures - Revised

Projects	Big Bend FGD System Reliability (New ECRC Program)	Big Bend Units 1&2 FGD (Existing Program)	Base Rates
Big Bend Units 3-4 Split Inlet Duct	$116,000		
Big Bend Units 3-4 Split Outlet Duct	4,829,000		
Big Bend Units 1-4 Mist Eliminator Upgrades		$1,610,000	$777,000
Big Bend Units 1-4 On-line Mist Eliminator Wash System	334,500	334,500	
Big Bend Units 1-4 On-line Nozzle Wash System	280,500	280,500	
Gypsum Fines Filter	2,866,000		
Gypsum Filter Vacuum Pump Upgrades		623,000	
Big Bend Units 1-4 Electric Isolation	3,300,000	3,300,000	
Big Bend Units 1-2 Gypsum Blow Down Line		284,000	
Controls Additions	203,000	203,000	
Big Bend Units 3-4 FGD Booster Fan Capacity Expansion			1,849,000
Big Bend Units 1-2 Recycle Pump Discharge Isolation Bladders		227,000	
Big Bend Units 1-2 Inlet Duct C-276 Wallpaper		234,000	
Total:	**$11,929,000**	**$7,096,000**	**$2,626,000**