

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the continuing need and costs associated with Tampa Electric Company's 5 Combustion Turbines and Big Bend Rail Facility.	DOCKET NO. 090368-EI ORDER NO. PSC-10-0252-PCO-EI ISSUED: April 23, 2010
---	--

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR MODIFICATION OF TESTIMONY FILING DATES AND FIRST ORDER MODIFYING PROCEDURE

I. Background

On December 22, 2009, the Commission issued Order No PSC-09-0842-PCO-EI, setting this matter directly for a formal administrative hearing. Also, in that Order, the Commission authorized Tampa Electric Company (TECO) to implement a revised step increase of \$25,742,209 on January 1, 2010, subject to refund with interest pending the outcome of the hearing. On March 11, 2010, Order No. PSC-10-0144-PCO-EI (Order Establishing Procedure) was issued, scheduling the matters for an administrative hearing on September 1 and 2, 2010. Order No. PSC-09-0740-PCO-EI acknowledging the Office of Public Counsel's (OPC) intervention in this docket was issued on November 9, 2009, and Order No. PSC-09-0758-PCO-EI granting intervention to Florida Industrial Power Users Group (FIPUG) was issued in this docket on November 17, 2009.

On March 19, 2010, OPC filed its Motion for Modification of Testimony Filing Dates (Opposed Motion), requesting that the Prehearing Officer modify the dates controlling the submission of prefiled testimony in this docket. Currently, the Order Establishing Procedure requires the submission of prefiled testimony filing as follows: 1) utility's testimony and exhibits by April 30, 2010; intervenors' testimony and exhibits by June 1, 2010; staff's testimony and exhibits, if any by June 11, 2010; and rebuttal testimony and exhibits by July 9, 2010.

II. OPC's Motion

OPC requested that the testimony filing dates be modified because the current schedule does not provide sufficient time for it to prepare testimony. OPC contends that with only 32 days between the utility's testimony and the intervenors' testimony, OPC does not have sufficient time to review the utility's testimony, request discovery, receive and review the discovery responses (30 days for discovery), and conduct any follow up discovery, if necessary. Further, OPC asserts that it is still waiting approval of its consulting contract that is subject to the Legislative approval process. Thus, an extension of time for filing intervenor testimony from 32 days to 60 days from the date of the utility's testimony filing date is necessary.

DOCUMENT NUMBER-DATE

03257 APR 23 09

FPSC-COMMISSION CLEAR

OPC proposed the following date modifications: 1) utility's testimony and exhibits by April 30, 2010; intervenors' testimony and exhibits by June 30, 2010; staff's testimony and exhibits, if any by July 9, 2010; and rebuttal testimony and exhibits by July 23, 2010. Further, the discovery deadline should be extended to August 27, 2010. In the alternative, OPC proposed that the utility testimony filing date could be moved to April 1, 2010. FIPUG was contacted and did not object to OPC's motion.<sup>1</sup>

### III. TECO's Response

On March 19, 2010, TECO filed a response opposing OPC's motion for modification of testimony filing dates. TECO argues that this docket was opened in July of 2009 and OPC has been a party since July 20, 2009. TECO contends that the issues to be resolved in this proceeding are limited in scope and were actually identified nearly 11 months ago in the Commission's final order in TECO's most recently completed rate proceeding. (Order No. PSC-09-0283-FOF-EI, issued April 30, 2009 in Docket No. 080317-EI, In re: Petition for a Rate Increase by Tampa Electric Company). TECO argues that the schedule in the order establishing procedure appears to be fair and accommodating to all participants and well thought out, especially considering the Commission's busy calendar. Moreover, TECO contends that because of the limited scope of the issues to be decided and the Commission's busy calendar, OPC's current proposal to nearly double its time for preparing testimony, while significantly reducing the time for TECO to submit rebuttal testimony, is unreasonable and inappropriate.

### IV. Decision

Having reviewed OPC's motion, and TECO's response, it appears that OPC has alleged sufficient reasons to modify the controlling dates of this proceeding. There is sufficient time to provide an extension of time to all parties for preparation of testimony and exhibits without prejudicing staff or other parties, and without impinging upon the dates for the Prehearing Conference or the evidentiary hearing. However, OPC's request to extend the discovery deadline to August 27, 2010 is denied. Accordingly, the controlling dates established by the Order Establishing Procedure shall be revised as set forth below:

	<u>Existing Date</u>	<u>Modified Date</u>
Intervenor Testimony & Exhibits	June 1, 2010	June 21, 2010
Staff Testimony & Exhibits	June 11, 2010	June 28, 2010
Rebuttal Testimony & Exhibits	July 9, 2010	July 30, 2010

---

<sup>1</sup> OPC's Motion for Modification of Testimony Filing Dates, filed on March 19, 2010, p. 2.

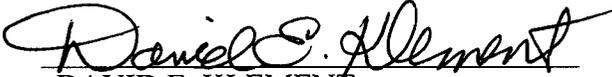
Based on the foregoing, it is

ORDERED by Commissioner David E. Klement, as Prehearing Officer, that the Office of Public Counsel's Opposed Motion to Modify Dates for Filing of Testimony is hereby granted in part and denied in part. It is further

ORDERED that the controlling dates established in Order No. PSC-10-0144-PCO-EI are modified as set forth in this Order. It is further

ORDERED that Order No. PSC-10-0144-PCO-EI is reaffirmed in all other respects.

By ORDER of Commissioner David E. Klement, as Prehearing Officer, this 23rd day of April, 2010.

  
DAVID E. KLEMENT  
Commissioner and Prehearing Officer

(SEAL)

KY

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.