

Alexus Austin

From: Angela Charles on behalf of Records Clerk
Sent: Monday, February 01, 2016 4:16 PM
To: 'Diana Csank'
Subject: RE: Docket No. 150223, TECO Cost Recovery
Attachments: 2016 02 01 Sierra Club ECRC Comments, Docket No. 150223.pdf

Good afternoon Ms. Csank,

We will be placing your comments below in consumer correspondence in Docket No. 150223-EI and forwarding your comments to the Office of Consumer Assistance and Outreach.

Sincerely,

Angela M. Charles
Commission Deputy Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee FL 32399-0850
850-413-6826

From: Diana Csank [<mailto:diana.csank@sierraclub.org>]
Sent: Monday, February 01, 2016 4:09 PM
To: Office of Commissioner Brown; Office Of Commissioner Edgar; Office of Commissioner Patronis; Office of Commissioner Brisé; Office Of Commissioner Graham
Cc: Baldwin English; Jim Varian; Ana Ortega; Ryan West; Katherine Fleming; Leslie Ames; Records Clerk; Elizabeth Tedsen; Mark Futrell; JR Kelly; Carlotta Stauffer; Jon Moyle; regdept@tecoenergy.com
Subject: Docket No. 150223, TECO Cost Recovery

Dear Chairwoman Brown and Commissioners,

Attached please find Sierra Club's comments regarding Docket No. 150233, "Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company."

Should you have any questions regarding these comments, please do not hesitate to contact me.

Regards,
Diana

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I check email infrequently. Please call me if you need a quick reply.



Diana Csank
Associate Attorney
Environmental Law Program
50 F Street NW, Eighth Floor
Washington, DC 20001
Phone: 202-548-4595

| E-mail: Diana.Csank@sierraclub.org

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February 1, 2016

Via Electronic Mail

Chairwoman Brown, Comm'rs. Brisé, Edgar, Graham, and Patronis
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 150223-EI

Dear Chairwoman Brown and Commissioners:

On behalf of itself and its more than 30,000 Florida members, Sierra Club submits these comments in response to the petition by the Tampa Electric Company (“TECO”) for approval of its CCR compliance program costs in Docket No. 150223-EI. As we explain below, to protect the public and our members from imprudent electric utility expenditures, before deciding whether utilities may recover expenditures pursuant to the Environmental Cost Recovery Clause—the Commission should assess whether they are, in fact, “prudently incurred.” More specifically, the Commission should, first, evaluate what it will take TECO (and other electric utilities) to comply with the full suite of regulations that apply to their coal-burning electric generating units (“coal EGUs”), including but not limited to the Coal Combustion Residuals Rule (“CCR Rule”), the Effluent Limitations Guidelines (“ELG”), the Cooling Water Intake Structures Rule (“CWIS”), and the Clean Power Plan (“CPP), and, second, consider the available alternatives—including retirement and investment in clean, low-cost, low-risk resources.

The Commission has interpreted the Environmental Cost Recovery Clause (“ECRC”), Section 366.8255, Florida Statutes (“F.S.”), to include three requirements:

- (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 that was created, 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.¹

The Commission has enforced these requirements in its “case-by-case” review of ECRC petitions ever since the *Gulf Order*.²

Staff’s recommendations in this docket— as well as related Docket No. 150007-EI— focus on only two of these requirements—(1) that the program is legally required and “would not be necessary but for TECO’s obligation to comply with a government-imposed environmental regulation” and the “need for these compliance activities was triggered after TECO’s last test year upon which rates are currently based;” and (2) that “the costs of the proposed compliance activities are not currently being recovered through some other cost recovery mechanism or through base rates.”³ Staff concludes that TECO’s proposal meets these two criteria.

Staff’s recommendations do not assess whether TECO’s proposed expenditures are “prudently incurred,” noting only that “the reasonableness and prudence of individual expenditures related to TECO’s CCR Compliance Program will continue to be subject to the Commission’s review in future ECRC proceedings.”⁴

It is unsurprising that Staff’s recommendations fail to assess the prudence of TECO’s proposal, as the record lacks vital information and analysis—which are commonly provided by utilities to regulators elsewhere—and whose absence here prevents Staff and the Commission from conducting their oversight responsibilities.

¹ *Gulf Order* No. PSC-94-0044-FOF-EI at 6.

² See, e.g., *In re: Petition by Florida Power & Light Company to recover Scherer Unit 4 Turbine Upgrade costs through environmental cost recovery clause or fuel cost recovery clause*, Order No. PSC-11-0080-PAA-EI (citing *Gulf Order* requirements and reviewing their enforcement in several ECRC decisions).

³ Document No. 00378-16 at 5; see also Order No. PSC-15-0536-FOF-EI at 9, 10, 11.

⁴ Document No. 00378-16 at 5.

Indeed, TECO has yet to provide the Commission with a complete assessment of what it will take for TECO's coal EGUs to comply with existing EPA rules, let alone TECO's complete assessment for bringing them into compliance with the CCR Rule.

It is imperative that TECO—and the other utilities subject to the ECRC—provide the Commission with the missing information with respect to their coal EGUs. If the Commission is to fulfill its duty to serve the public—and specifically its statutory charge to protect consumer from imprudent expenditures of their money—the Commission needs the utilities to account for all of the reasonably foreseeable costs and risks associated with the continued reliance on coal EGUs, as Sierra Club has persistently urged, for three key reasons—

First, the CCR Rule is self-implementing,⁵ meaning Florida's electric utilities have a legal mandate to elect and implement appropriate compliance pathways for their covered activities and facilities, and to not wait for any Florida Department of Environmental Protection ("FDEP") permitting or guidance to do so. Therefore, unlike the usual air pollution abatement measures that come before this Commission under the ECRC after FDEP review, the Commission lacks input from any FDEP review of the proposed measures for CCR abatement.⁶ Evidently, these CCR abatement measures require greater scrutiny by the Commission.

Second, there are several fast approaching compliance deadlines under other EPA rules that apply to Florida's coal EGUs, and the Commission needs a robust accounting of the costs and risks to which consumers will be exposed if the utilities and Commission decide that these coal EGUs will continue to play a big role in keeping our lights on. These costs and risks can only be meaningfully evaluated if they are looked at comprehensively, rather than piecemeal, as TECO would have the Commission do, by presenting only the partial compliance costs for one

⁵ See U.S. EPA, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, Final Rule, 80 Fed. Reg. 21,302, 21,311 (Apr. 17, 2015), as amended by Technical Amendments to the Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities—Correction of the Effective Date, 80 Fed. Reg. 37,988 (Jul. 2, 2015); 40 C.F.R. §§ 257 and 261 ("The federal standards apply directly to the facility (are self-implementing) and facilities are directly responsible for ensuring that their operations comply with these requirements.").

⁶ At the time of this writing, no written input from FDEP appears in Docket No. 150223-EI.

rule. This is profoundly unwise given that the useful life of such expenditures is often supposed to last for decades, meaning the consumers may be paying for bolting things to the ground at costs that are at a mismatch with how long they may actually be used and useful to consumers.

Third, the plain meaning of “prudent” is “marked by circumspection;” that is, being “careful to consider all circumstances and possible consequences.”⁷ Circumspection requires the Commission’s ECRC decisions to address the evolving regulatory environment around coal and carbon, and the fact that utilities and regulators across the country are retiring rather than retrofitting coal EGUs. Specifically, it requires the Commission to consider phasing out fossil fuels from these units through retirement and investment in cleaner, low-cost, low-risk resources such as solar, wind, and energy efficiency.⁸ Indeed, the City of Tallahassee has already confirmed that solar, wind, and energy efficiency are a more cost-effective combination for its customers, as evidenced by the City’s recently publicized plans to invest in 10 MW of solar power⁹ and up to 50 MW of wind power,¹⁰ in addition to its ongoing energy efficiency programs.¹¹

To be sure, Sierra Club appreciates that some of TECO’s proposed expenditures in this docket are for remediation measures that are supposed to achieve environmental benefits. However, TECO’s submittals to the Commission fail to explain which expenditures are for phasing out coal burning at TECO’s coal EGUs versus those expenditures that would support ongoing coal burning—and thus potentially expose consumers to needlessly costlier power because of foreseeable retrofits that will not serve consumers nearly as well as retirement and clean energy procurement.

⁷ Merriam Webster Dictionary, *available at* <http://goo.gl/clqElB>.

⁸ See also Sierra Club letter of December 15, 2015, *available at* <http://goo.gl/Pddbbe> (discussing need for robust retrofit-or-retire analyses).

⁹ Climate Wire, “As prices drop, cities and towns choose sun and wind for their energy,” *available at* <http://goo.gl/eKRJgQ>.

¹⁰ Electric Light & Power, “Florida city to buy wind power from Clean Line transmission project,” *available at* <http://goo.gl/qr1jX2>.

¹¹ The Greater Tallahassee Chamber of Commerce, “City wins two prestigious national awards from American Public Power Association,” *available at* <http://goo.gl/cXHx3L>.

For all the foregoing reasons, Sierra Club respectfully requests that—before deciding to allow any further expenditures on coal EGUs pursuant to the Environmental Cost Recovery Clause—the Commission, first, evaluate what it will take for the coal EGUs to comply with the full suite of applicable regulations, including but not limited to the CCR, ELG, CWIS, and CPP rules, and, second, consider the available alternatives—including retirement and investment in clean, low-cost, low-risk resources.

Thank you for your consideration.

Respectfully submitted,

/s/

Diana Csank
Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
Phone: 202-548-4595
E-mail: diana.csank@sierraclub.org

/s/

Elizabeth Tedsen
Law Office of Elizabeth Tedsen
Phone: 530-524-2702
E-mail: etedsenlaw@gmail.com
Outside Counsel for Sierra Club