

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power  
cost recovery clause with  
generating performance incentive  
factor.

DOCKET NO. 030001-EI  
ORDER NO. PSC-03-1137-PCO-EI  
ISSUED: October 13, 2003

FIRST REVISED ORDER ESTABLISHING PROCEDURE

On September 25, 2003, Tampa Electric Company (Tampa Electric) filed a Motion for Leave to File Supplemental Direct Testimony and Exhibit, requesting that the Prehearing Officer receive and consider the supplemental direct testimonies of Tampa Electric witnesses Dibner and Wehle and witness Dibner's supplemental exhibit. On September 29, 2003, the Florida Industrial Power Users Group (FIPUG) filed a response opposing Tampa Electric's Motion for Leave to File Supplemental Direct Testimony and Exhibit. On September 30, 2003, the Office of Public Counsel (OPC) filed a Motion in Opposition to Tampa Electric's Motion, requesting that the issues addressed by the supplemental testimony of witnesses Dibner and Wehle be deferred from consideration at the Commission's November 2003 hearing in this docket. On October 3, 2003, Tampa Electric filed a response opposing OPC's Motion in Opposition

On September 30, 2003, Tampa Electric filed a Motion to Alter Schedule, requesting that the Prehearing Officer alter the schedule for the filing of testimony in order to accommodate the concerns raised in intervenors' objections to Tampa Electric's Motion for Leave to File Supplemental Direct Testimony and Exhibit. On October 1, 2003, and October 3, 2003, FIPUG and OPC, respectively, filed a response opposing Tampa Electric's Motion to Alter Schedule. On October 6, 2003, Tampa Electric executed a new contract for waterborne coal transportation.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case . . . ." Based upon this authority, and having considered the Motions and Responses, Order No. PSC-03-0113-PCO-EI, issued January 21, 2003, which established procedures for this docket, is revised as set forth below.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

In its motion, Tampa Electric requests leave to file the supplemental direct testimony and exhibit of witness Brent Dibner and supplemental direct testimony of witness Joann T. Wehle. Tampa Electric states that Mr. Dibner's prepared direct testimony filed on September 12, 2003, addressed at length the state of the waterborne transportation markets and the adequacy and reasonableness of the bid solicitation Tampa Electric issued on June 27, 2003. Tampa Electric states that Mr. Dibner described his assistance in the preparation and issuance of Tampa Electric's request for proposals (RFP) and described the bid evaluation methodology that would be used. According to Tampa Electric, Mr. Dibner stated that at the conclusion of the evaluation process he would offer supplemental direct testimony and an exhibit describing in detail the results of his analysis and his recommendations based on those results. Tampa Electric further states that Ms. Wehle's September 12, 2003, testimony and exhibit addressed the RFP process and stated her intent to file supplemental direct testimony describing details of the bid evaluation, the methodologies used for market assessment, and the results of the evaluation process.

Tampa Electric asserts that in its September 12, 2003, projection filing for calendar year 2004, it advised all parties that it anticipated being able to file supplemental direct testimony of witnesses Dibner and Wehle on or before September 25, 2003. According to Tampa Electric, the supplemental testimonies and exhibit will provide useful information to the Commission and the parties in addressing and resolving all issues relating to the reasonableness of the methodology used by Tampa Electric in soliciting and evaluating responses to its RFP. Tampa Electric states that its proposed filing of supplemental direct testimony and exhibit is not unlike the filing of corrected or revised testimony updating earlier testimony with information that was not known or available when a witness's testimony was originally submitted. Tampa Electric asserts that the filing of corrected or revised testimony is routinely allowed to avoid resolving issues based on erroneous or incomplete data.

FIPUG responds that it opposes Tampa Electric's Motion for Leave to File Supplemental Direct Testimony and Exhibit. FIPUG states that simply because Tampa Electric informed the parties of its intent to file supplemental direct testimony in no way justifies the last minute filing. FIPUG asserts that instead of

being "corrected or revised," the supplemental direct testimony is entirely new testimony on topics not yet addressed and includes a seventy-eight page consultant's report not previously provided. FIPUG argues that if Tampa Electric's supplemental direct testimony is permitted, intervenors would only have one week to review the analysis, conduct discovery, and draft testimony in response to Tampa Electric's witnesses. Therefore, according to FIPUG, permitting the supplemental testimony is unreasonable and a violation of intervenors' due process rights. FIPUG states that the timing of Tampa Electric's RFP and all activities connected to it have been solely in Tampa Electric's control and its last minute filing should not be permitted. FIPUG further states that the Commission should defer any consideration of issues surrounding Tampa Electric's RFP to the next fuel adjustment hearing or to a separate docket.

In its Motion in Opposition, OPC argues that the public interest would best be served by a delay of the Tampa Electric RFP issue. OPC asserts that Tampa Electric's supplemental direct testimony is not corrected or revised testimony that is routinely allowed by the Commission. According to OPC, inadequate time exists for meaningful study and discovery by the parties and the Commission upon these complex and important issues. OPC states that an extension of time to file testimony would not cure such inadequacy given the complexities and the need for discovery. OPC asserts that it may need to procure expert assistance to evaluate the unfamiliar models presented in Tampa Electric's testimony. Therefore, according to OPC, it is appropriate to defer consideration of Tampa Electric's RFP issue to a separate proceeding or the next fuel adjustment hearing. OPC argues that only by deferring this issue until 2004 can the due process rights of all parties be preserved.

In its response to OPC's Motion in Opposition, Tampa Electric states that the issue OPC seeks to block was formally identified in Staff's Preliminary List of Issues dated July 31, 2003, and was informally discussed among the parties prior to the filing of the Preliminary List of Issues. According to Tampa Electric, its suggested alteration of the procedural schedule, discussed below, would place intervenors in as good or better a position from which to respond to Tampa Electric's supplemental testimony and exhibit than the original procedural schedule. Tampa Electric asserts that

the issue OPC is attempting to delay was addressed at length in its September 12, 2003, filing of direct testimony. According to Tampa Electric, postponing or deferring any of the issues related to its waterborne coal transportation or other Tampa Electric specific issues would adversely affect Tampa Electric since the issues will continue unresolved with all the risks and uncertainties associated with the specter of unresolved issues. Tampa Electric argues that delaying the issues identified in Staff's Preliminary List Of Issues will unfairly reward inactivity on the part of intervenors at the expense of Tampa Electric's substantial interests.

To address the intervenors' concerns outlined above, Tampa Electric filed a Motion to Alter Schedule, requesting that the Prehearing Officer alter the procedural schedule for the filing of testimony in this docket. Tampa Electric states that the procedural schedule allowed 21 days between the utilities' filing of their projection testimony and the due date for intervenors' testimony. According to Tampa Electric, a remedy to FIPUG's objection concerning only having one week to review the analysis, conduct discovery, and draft responsive testimony is to provide both staff and intervenors 21 days from September 25, 2003, (October 16, 2003) within which to file testimony responsive to Tampa Electric's supplemental direct testimony. Tampa Electric also requests that the rebuttal testimony due date be extended until October 23, 2003. Tampa Electric asserts that excluding the information included in its supplemental direct testimony would leave the Commission without essential information with which to make an informed decision in this matter.

FIPUG responds that it opposes Tampa Electric's Motion to Alter Schedule, as it will not remedy the problem at hand. FIPUG states that a slight extension of time cannot remedy the inability of intervenors to conduct meaningful discovery and prepare testimony and analysis in regard to testimony filed on September 25, 2003, with a hearing scheduled for November 12, 2003. FIPUG argues that the only reason to rush to decide this issue is so that parties will not have sufficient time to investigate the RFP and the analysis related to it. FIPUG asserts that the Commission should allow deliberate and reasoned evaluation of the process Tampa Electric used in its RFP and that cannot happen in one week or even three weeks.

OPC responds that it opposes Tampa Electric's Motion to Alter Schedule. OPC states that it is unreasonable to expect parties to digest the supplemental testimony and exhibit, hire experts, conduct discovery, and file testimony on unfamiliar material in twenty-one days. According to OPC, no compelling reason exists for a decision on these issues at the 2003 fuel hearing, particularly when weighed against the harm to the process from a quick decision.

On October 8, 2003, Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz (residential electric customers of Tampa Electric Company) filed a Motion to Establish Separate Docket. The residential electric customers adopt FIPUG's and OPC's position in objection to the Commission's consideration of the Tampa Electric supplemental direct testimony and exhibit at the November 12, 2003, hearing. According to the residential electric customers, a separate docket would permit the Commission and the parties to focus their efforts and time on the Tampa Electric coal transportation issues separate from the standard fuel issues concerning the rest of the utilities in the docket. The residential electric customers further state that establishing a separate docket would allow intervenors a sufficient and fair amount of time to analyze Tampa Electric's supplemental testimony, conduct discovery and prepare responsive testimony.

Upon review of the pleadings and consideration of the arguments, Tampa Electric's Motion for Leave to File Supplemental Direct Testimony and Exhibit is granted. In order to provide intervenors and staff additional time to respond to Tampa Electric's supplemental direct testimony and exhibit, the following revised dates shall now govern the deadline for filing testimony related to Tampa Electric's RFP process and its September 25, 2003, supplemental testimony.

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|---|------------------|
| 1) Intervenors' testimony<br>and exhibits           | October 16, 2003 |
| 2) Staff's direct testimony<br>and exhibits, if any | October 23, 2003 |
| 3) Rebuttal testimony and exhibits                  | October 30, 2003 |

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This ruling is not intended as a ruling on whether or not issues surrounding Tampa Electric's waterborne coal transportation arrangements should be addressed at the November, 2003, hearing in this docket. Parties shall have the opportunity to address the timeliness of Tampa Electric's waterborne coal transportation issues at the Prehearing Conference in this docket.

As a separate matter, Progress Energy Florida, Inc. (PEF) has indicated it has no objection to extending the deadline for filing of staff testimony regarding PEF's waterborne coal transportation market price proxy from October 9 to October 14, 2003. The deadline for PEF's rebuttal testimony to staff's testimony shall be adjusted commensurately, to October 21, 2003.

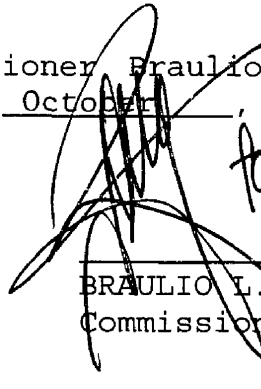
It is therefore,

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that Tampa Electric's Motion for Leave to File Supplemental Direct Testimony and Exhibit is granted. It is further

ORDERED that the controlling dates established by Order No. PSC-03-0113-PCO-EI, issued January 21, 2003, are modified as set forth in the body of this Order. It is further

ORDERED that Order No. PSC-03-0113-PCO-EI is reaffirmed in all other respects.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 13th day of October, 2003.

 for Commissioner Braulio L. Baez

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BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

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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 Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, 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.