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January 13, 2004

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BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor; Docket No. 040001-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are fifteen (15) copies of Tampa Electric Company's Response to Joint Motion for Reconsideration.

Also enclosed is a diskette containing the above document generated in Word and saved in Rich Text format for use with WordPerfect.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

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James D. Beasley

JDB/bjd
Enclosures

cc: All Parties of Record (w/encls.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.	))))	DOCKET NO. 040001-EI FILED: January 13, 2004

TAMPA ELECTRIC COMPANY'S
RESPONSE TO JOINT MOTION FOR RECONSIDERATION

Tampa Electric Company ("Tampa Electric" or "the Company") files this its Response to the Joint Motion for Reconsideration filed by Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG") and Florida Retail Federation ("FRF") (hereafter "Intervenors") on January 6, 2004 and says:

1. Intervenors have not pointed out any point of law or fact overlooked by the Commission in rendering its Order No. PSC-03-1461-FOF-EI ("Order 1461").

A. Intervenors cite no point of law which was overlooked.

B. Intervenors sole point of fact is that the Commission miscalculated the level of operation and maintenance ("O&M") costs to be used to offset Tampa Electric's prudently incurred fuel and purchased power costs.

2. In the first instance, Tampa Electric strenuously objects to any offset as stated in its January 6, 2004 Motion for Reconsideration. By making the $8.4 million offset discussed in Order 1461, the Commission erroneously denied recovery of prudently incurred fuel and purchased power costs. The Commission then compounded that error by not considering other increases in base rate costs which more than offset the $8.4 million of O&M costs, thus violating the principle of fairness set out in GTE Florida, Inc. v. Clark, et al., 668 So.2d 971 (Fla. 1996)

and setting in motion a series of unintended consequences. In short, no adjustment should have been made at all. Enlarging the offset, as Intervenors would have the Commission do, would compound the penalty imposed by the Commission and further increase the regulating uncertainty utilities face as they consider entering into agreements with the DEP and EPA.

3. However, if it is assumed for purposes of argument that an adjustment could legally be made, the Commission clearly intended for the total amount of the adjustment for all relevant time periods to be $8.4 million. This intent is unequivocally set out in the very same quotations from the deliberations of the Commission cited by Intervenors. The clear intent, all things considered, was to make an $8.4 million offset for all relevant time periods.

4. The Commission intentionally concentrated on Scenario 5 of Exhibit MJM-5 which shows a net savings of $10.5 million which was then reduced by 20 percent to $8.4 million to arrive at the offset to prudently incurred fuel and purchased power costs. Again, without conceding the validity of the offset, the Commission's decision correctly reflects the dialog of the Commission in reaching its decision that $8.4 million was the appropriate total amount of the offset.

5. Despite the facts, the Intervenors make a completely erroneous calculation of $23.5 million of alleged net savings for 2004 by assuming that Gannon Units 1 – 4 operate up to the last minute of the required shut down of December 31, 2004. Intervenors then add that amount to the $8.4 million to arrive at a total net savings of $31.9 million. This calculation is totally inappropriate because, among other things, the calculation is inconsistent with:

A. The Commission's vote at the Hearing.

B. The fact that Bayside Units 1 and 2 are now operational, adding 1,801 MW of winter capacity and 1,598 MW of summer capacity to Tampa Electric's system and

thereby displacing entirely any need for the 449 MW Gannon Units 1 – 4 capacity. (See Order 1461 footnotes 2 and 3, pg. 13). The Commission stated:

> The evidence further indicates that Gannon Units 1 through 4 were not needed for reliability purposes in 2004 due to the addition of Bayside Units 1 and 2. (Order 1461, pg. 20.)

C. All plans for the timing of the shutdown of Gannon Units 1 – 4. The Commission said in Order 1461:

> . . . TECO never had a plan to operate the units until December 31, 2004. (Order 1461, pg. 20.)

D. The evidence presented by OPC's Witness Majoros, who recognized the Company never planned to run Gannon Units 1 – 4 to the end of 2004.

E. The Commission's finding that the timing of the shutdown of Gannon Units 1 – 4 was prudent.

F. The significant environmental benefits of the displacement of Gannon coal-fired capacity with Bayside natural gas-fired capacity and that the timing of the shutdown of Gannon Units 1 – 4 contributed to the early achievement of the underlying goal of the Consent Final Judgment ("CFJ") and the Consent Decree ("CD"). The shutdown of Gannon Units 1 – 4 is extremely beneficial to customers by improving the environment in the Tampa Electric service area.

G. The evidence presented by Tampa Electric's Witness Whale showing that the Company has not, in fact, reduced the total level of O&M expenditures and that the so-called "savings" are non-existent when all relevant factors are considered.

6. To expand the effective offset of the recovery of prudently incurred fuel and purchased power costs from $8.4 million to a total of $31.9 million would grossly penalize the

Company and shock basic sensibilities. The Commission recognized that it would be grossly unfair to so expand the offset.

7. The expansion of the offset by an additional $23.5 million as Intervenors demand would be grossly unfair particularly in view of the unrefuted evidence in the record presented by Witness Whale that Tampa Electric's total O&M expenses did not go down at all following the shutdown of the Gannon Units 1 – 4 and, in fact, increased.

8. In summary, it is not appropriate to make an adjustment to fuel and purchased power costs based on an isolated, out-of-context consideration of a single category of base rate costs restricted to four generating units at a single power plant. However, the Commission decided for all relevant time periods to make an offset of $8.4 million applied against prudently incurred costs. The Commission struggled with whether to make such an offset and, if so, how much the offset should be. The Commission acknowledged its struggle with whether any adjustment at all is justified saying:

> We are also confronted with our finding that TECO's decision to shut down the units when it did was prudent and based on sound economic, reliability, and safety concerns, which tends to support TECO's argument that no offsetting should occur. (Order 1461, pg. 21.)

The Commission decided the $8.4 million adjustment was the appropriate total adjustment. While Tampa Electric believes no adjustment was warranted, the Commission intended for a $8.4 million offset to be made and certainly did not intend to expand that figure by over three times as much to a total of $31.9 million. Intervenors' contention to the contrary is absurd.

9. The Commissioners' dialog during their deliberation on the offset clearly shows a struggle on whether any adjustment at all was appropriate and was followed by an attempt to find

a compromise amount that would recognize some amount of savings as an offset to prudently incurred fuel and purchased power costs.

This dialog started with Staff's recommendation (Tr. 1192-1193) that no adjustment at all was appropriate. The Commissioners, after an extensive discussion, considered a wide range of options and settled on using Scenario 5 in MJM-5 as the top of the range of reasonableness in recognizing some savings. (Tr. 1228.) This range was described by Commissioner Deason as follows:

> The range is zero to whatever MJM-5 says. (Tr. 1228.)

In the course of the discussions, it was clearly understood by the Commission that Exhibit MJM-5 identified potential savings of Gannon Units 1 – 4 for only 2003 and that the Commission's intent was to limit any total adjustment to $8.4 million.

Commissioner Deason stated (Tr. 1252):

> . . . The open issues for TECO relate to whether we are going to recognize any O&M savings that were incurred. Part of those savings were incurred in 2003, and I assume part of those savings will be incurred in 2004.
>
> * * * * *

Mr. Haff (Tr. 1253):

> I will say this, the exhibit, the confidential exhibit we are referring to only is for 2003.

Commissioners Jaber and Davidson then expressed their comfort in using Scenario 5 in MJM-5 (Tr. 1259.) After that clarification on the record, Commissioner Deason again articulated his struggle with making any adjustment at all or, at the least, reaching some sharing of the savings saying (Tr. 1260):

> I just fall back to what I said earlier in the discussion is that these – I'm convinced that TECO management made the right decision in

> closing the plants when they did. And it was made for the right considerations, both economic and noneconomic considerations and that there are savings. And there can be an argument made that the fact that the correct decision was made, there should be some recognition of that with some type of a sharing approach beyond what's inherent. (Tr. 1261.) (Emphasis supplied.)

After further discussion, Commissioner Deason observed (Tr. 1265):

> . . . it's my humble nonlegal opinion that we could either offset 100 percent or offset zero percent, and we have evidence in the record that would withstand an appeal. We have very adequate testimony from the consumer advocates saying that there should be 100 percent offset. We have very compelling evidence from the company indicating that there should be no offset. (Emphasis supplied.)

The Commission then proceeded to make its decision.

Commissioner Deason:

> I'm willing to make a motion and certainly willing to discuss it further if necessary. I would move that we would recognize the amount in Scenario 5 of Exhibit MJM-5 as O&M savings, and that we would attribute 80 percent of that savings to the ratepayers, which would be whatever that number calculates to be, something in excess of $8 million would be a reduction in fuel costs that would be passed through to customers. (Tr. 1266.)

Commissioner Davidson:

> Second. (Tr. 1267.)

Before the vote Staff recommended that the savings would be reflected as a true-up for 2003.

Commissioner Deason then said:

> Now, when you say "finalized," just the question – we're not going to go back and try to recalculate whether there's a change to the 10.521 million. We're taking that number as – based upon the evidence we've taken, we're not going to be truing-up the 10.521 million. (Tr. 1267.)

Mr. Mailhot:

No, we're not going to attempt to do that. (Tr. 1268.)

Commissioner Deason:

> You're talking true-up in just the normal sense of truing-up that we normally do every fuel adjustment proceeding. (Tr. 1268.)

Mr. Mailhot:

> Right, because at this point in time we haven't finalized 2003. We still have a lot of estimated numbers in there, but we're going to assume that whatever you vote today is the number for that point. (Tr. 1268.)

Commissioner Deason:

> Okay. All right. And that would be part of my motion as well, that that would be the procedure for recognizing that amount of sharing. (Tr. 1268.)

Commissioner Davidson:

> Second. (Tr. 1268.)

Chairman Jaber:

> Okay. There's a motion and a second to accept Scenario 5 of MJM-5 as it relates to the net savings but to take 80 percent of that savings and apply as a reduction in fuel costs for the benefit of ratepayers and thereby recognizing 20 percent for the shareholders, and that the procedure for the true-up would be as articulated by staff, that we recognize that the last six months of 2003 will be affected. (Tr. 1268.)
>
> All those in favor say "aye." (Tr. 1268.)
>
> (Simultaneous affirmative responses.) (Tr. 1268.)

10. Intervenors argue that references to MJM-5 developed a formula, not the amount of the savings. The above-quoted dialog completely refutes this assertion made up by Intervenors.

11. In the end, the Commission clearly and knowingly made its offset based on Scenario 5 in MJM-5 reduced by 20 percent to $8.4 million as the Commission's selection of an appropriate total adjustment for all relevant time periods after all things are considered.

12. The Commission did not leave any room at all for Intervenors to come back to the Commission to expand the offset by an additional $23.5 million from $8.4 million to $31.9 million. Indeed, Intervenors' new approach is inconsistent with OPC witness' calculation.

13. Intervenors' Joint Motion for Reconsideration fails to point out anything the Commission misapprehended or failed to consider in arriving at a total amount of the offset it imposed. Instead, Intervenors simply argue for a significantly higher disallowance of costs the Commission found were prudently incurred. Intervenors' attempt to create a larger amount than even OPC's Witness Majoros testified to by arguing a concocted formula theory which the Commission's dialog, set out above, demonstrates is a myth. Their efforts in this regard are unfair and inappropriate and should be soundly rejected. Intervenors' Joint Motion for Reconsideration is totally without merit.

WHEREFORE, Tampa Electric urges this Commission to deny Intervenors' Joint Motion for Reconsideration.

DATED this 13th day of January, 2004.

Respectfully submitted,

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Tampa Electric Company's Response to Joint Motion for Reconsideration has been furnished by U. S. Mail or hand delivery (*) on this 13th day of January 2004 to the following:

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