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b. Docket No. 060001-EI

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 21 pages.

e. The document attached for electronic filing is Citizens' Post-Hearing Memorandum in Support of Their Proposed Modification of the Generating Performance Incentive Factor.

(See attached file: 060001 cposthearin.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor	)))))	DOCKET NO. 060001-EI

CITIZENS' POST-HEARING MEMORANDUM IN SUPPORT OF THEIR PROPOSED MODIFICATION OF THE GENERATING PERFORMANCE INCENTIVE FACTOR

Introduction

At the conclusion of the evidentiary hearing in the above docket, the Commissioners directed parties to submit briefs on Issues 21 and 22, both of which relate to the Citizens' petition to modify the Generating Performance Incentive Factor in a way that will serve the Commission's original objective better and render the mechanism fairer to customers. In the following Memorandum, Citizens will summarize and support the modification proposed by OPC witness James A. Ross.

ISSUE 21: Should the Commission amend or modify the existing GPIF mechanism so as to incorporate a "dead band" around the scale of Generating Performance Incentive Points in the amounts proposed by OPC?

CITIZENS: *Too frequently, customers pay GPIF rewards in circumstances in which rewards are unwarranted. The Commission should "raise the bar." While

the Commission may wish to adjust OPC-proposed band parameters, a dead band is needed to ensure that customers pay rewards only when a utility's performance materially surpasses recent operating history.*

ARGUMENT

What is the Generating Performance Incentive Factor?

Generally, each electric utility has within its "fleet" of power plants several or more generating units that, because they operate cheaply relative to others, are the first units the utility calls on to meet customers' needs for electricity. Because the utilities operate these units as frequently as possible to meet the customers' fundamental, ongoing demand for service, we refer to them as "base load" units. Base load units, which operate a greater amount of time relative to other generating units, provide the best opportunity to wring fuel cost savings from increases in efficiency. In 1980 the Commission sought to devise an incentive for utilities to attempt to enhance the operating efficiency of their base load units. The Commission focused on incentives to improve the "heat rate" of the units and their "availability."

The "heat rate" is a measure of the efficiency with which the generating unit converts the thermal energy stored in fuel into electricity. (TR-723) It is typically expressed in terms of the number of British thermal units of heat energy that must be expended, through the burning of fuel, to yield a kilowatt hour of electricity. With heat

rate, a lower numerical rating means a higher efficiency, as the objective is to reduce/minimize the amount of fuel that must be burned to generate a kilowatt hour of electricity. (TR-723)

The "availability" of a unit refers to the readiness of the unit to operate when called upon. (TR-723) If the cheapest-to-operate base load units are out of service when needed to provide electricity to customers, the utility must employ other units that are more expensive to operate to satisfy the demand on the system, thereby increasing the costs of generating beyond what they would have been had the base load unit been "on line" and ready to "commit." Availability is typically measured in terms of the percentage of hours the unit is ready to operate if called upon. With availability, a higher numerical rating translates into greater efficiency and potentially lower fuel costs. (TR-723).

The purpose of the "Generating Performance Incentive Factor," or GPIF, is to encourage the utilities to improve the productivity of their base load units. (TR-723). The Commission prescribed the mechanism of the GPIF in a manual that it attached to the order adopting the GPIF. Pursuant to the order and manual, the utilities submit targets for the heat rates and availability factors of individual base load generating units. The manual specifies that the targets for each unit shall be based on the unit's actual historical operating data for the prior three years. Range of potential performance increments above (better than) and below (worse than) the target are also specified and are divided into 10 "points." Each additional "point" of distance from the target corresponds to an increasingly larger positive reward or negative penalty. The maximum

reward or penalty is specified as 25 basis points on the utility's average equity investment. (TR-725).

At the end of a projection period, the actual heat rate and availability values are compared to the targets, and (after the individual units' scores have been weighted in the manner prescribed by the manual) are aggregated into a composite score. Depending on where a utility's overall score falls on the scale (10 points on either side of the target), it either earns a reward or receives a penalty. Any positive score wins a reward, the magnitude of which is a function of the positive distance from the target. Any negative score receives a penalty, the magnitude of which is a function of the negative distance from the target. (TR-724-725; Schedule 1 of Exhibit 54).

Why review the GPIF in this proceeding?

The Commission prescribed the GPIF in 1980. Since that time, the Commission has focused primarily on the setting of targets and the calculation of rewards or penalties for individual projection periods—originally of 6 months in duration, more recently of 12 months. OPC engaged consultant and expert witness James A. Ross to assist OPC in evaluating whether, based on experience in the implementation of the GPIF, the mechanism is accomplishing the Commission's objective, or whether instead the

experience reveals structural shortcomings or anomalies that, in the interests of the customers who fund any rewards, should be addressed through a prospective modification of the GPIF. (TR-720).[1]

What should the Commission expect to find if the GPIF is operating as the Commission hoped at the time it devised the mechanism in 1980?

The objective of the GPIF is to accomplish, through the payment of monetary rewards, improvements in the thermal efficiency (heat rate) and the availability factors of the utilities' base load generating units. Mr. Ross's premise is simple and straightforward: If customers have in fact been paying positive rewards over time, and if those positive monetary rewards have in fact acted as an incentive to modify behavior so as to improve efficiency, then it follows that the data should display a trend of improvements in the individual units that are part of the GPIF program over time.

What do the data reveal?

Mr. Ross's analysis demonstrates that during the period April 1983 through December 2004 the monetary rewards earned by utilities have exceeded penalties by

[1] During cross-examination of Mr. Ross, the utilities appeared to suggest that the passage of time somehow should shield the GPIF from review. To the contrary, the fact that the Commission now has the experience of years with the GPIF means the Commission is equipped to review the performance of the mechanism and make any adjustments needed to conform the GPIF to its policy objectives. Besides, OPC's petition is not the first occasion on which the Commission has considered modifications to the GPIF. In 1987 the Commission overhauled the reward/penalty components to reduce by half the maximum achievable reward payments. (TR-859)

$120 million. On an annual basis, Progress Energy consistently received monetary rewards—meaning, necessarily, that it invariably beat the targets generated by the GPIF methodology-- every year between April 1987 through December 2004. Similarly, FPL received an unbroken string of positive monetary rewards annually between the years April 1990 through December 2004. See Exhibit 54, Schedule 1 and 2.

Yet, despite the payment of $120 million in net monetary rewards, and the ability of the two largest utilities to beat their GPIF targets regularly and consistently over time, the data reveal that those rewards have not led to broad, sustained patterns of improvement in the efficiency with which the utilities operate their base load units. The actual availability and heat rate performance values for the individual units, for the most part, show mixed results. The example of FP&L helps make the point. Among participating electric utilities, FPL has the highest number of generating units in its GPIF calculation. Despite FPL's successful string of monetary rewards, only a relatively small percentage of the total FPL units in the program show linear trend improvements in both the availability and heat rate annualized performance measurements. This absence of a correlation between monetary rewards and performance that one would expect to see in an effective incentive mechanism is illustrated in Schedule 7 of Exhibit 54. The analysis includes the linear trend for each unit's availability factor and heat rate for annualized data during the 15–year period October 1989 through December 2004, and also the most recent six calendar year period (1999 through 2004). The information in Schedule 7 shows that, of the 27 units evaluated, only 59.3% (16 units) had availability trending improvements over the 15-year period. Moreover, of the 16 units which showed trending

improvements during the 15-year period, only 6 of those 16 (or about 38%) also showed trending improvements over the more recent six-year period.

The heat rate data of FPL exhibits even lower performance improvement trends. Of the 27 FPL units evaluated, only 29.6% (8 units) had heat rate trending improvements over the 15-year period. Moreover, of the 8 units that showed trending improvements during the 15-year period, only 2 units (or about 25%) also showed heat rate trending improvements over the six-year period. Finally, only 5 units (18.5% of the 27 units evaluated) showed both availability and heat rate trending improvements over the 15-year period. Exhibit 54, Schedule 7.

Equally troubling is the fact that, under the existing GPIF, utilities have received rewards even during years in which their performance fell below the levels of prior years. Schedule 4 of Exhibit 54 shows the TECO targets and actual adjusted availability and heat rate data for calendar years 2001 through 2004. The availability target for 2004 reflected a 4.49% lower performance than the 2001 target, and the decline (deterioration) in the heat rate target for the same period was 2.66%. In calendar year 2004, TECO received a $729,534 reward payment from ratepayers for availability and heat rate performance that was 2.21% and 1.21% poorer, respectively, than actual performance for calendar year 2001. In 2001, the Commission penalized TECO in the amount of $831,029 for performance better than the performance it *rewarded* a year later. Similarly, PEF's performance in 2002 was poorer than its performance in 2001, but under the current GPIF methodology PEF's customers bore the cost of a "reward" in the

amount of $2,781,223. The amount of the GPIF-related 2002 reward was approximately four times greater than the reward that PEF received in 2001—even though PEF performed better in 2001 than in 2002.

Schedule 6 of Exhibit 54 presents a similar example of two recent calendar years in which a decline in Gulf's system performance relative to a prior year still resulted in a $441,988 reward.

In short, the current GPIF has not led to trends of improvements to the individual units encompassed within the GPIF program. Indeed, the experience over the years exhibits results ranging from the disappointing to the perverse. All of the above examples belie the claim of one utility, made during opening statements, that the GPIF does not need to be "fixed".

What characteristic of the GPIF makes these seemingly incongruous and counterintuitive results possible?

These results are explained, at least in part, by the emphasis the GPIF methodology places on using recent history to set future targets. If recent history is poor relative to the performance of which the utility has proven capable in the past, then a utility can receive a reward for performance that may be an improvement over the recent past but that would be viewed as mediocre or even subpar when related to the unit's

design parameters or the utility's past accomplishments. (TR-733) Moreover, under the existing GPIF methodology rewards can be paid as a result of changes in performance that are so small as to fall within the range or variability associated with the imprecision inherent in setting future performance based on historical data. (TR-753-754)

What conclusions should the Commission draw from the analysis of the GPIF experience to date?

During the lengthy period that Mr. Ross analyzed, the utilities frequently—and, in the case of the two largest utilities, consistently-- beat the targets that the GPIF mechanism develops from historical data. Over the same period the customers paid net monetary rewards of $120 million. However, customers did not receive benefits in the form of universal, trended enhancements to the operating efficiencies in the base load units measured by the GPIF program. In short, in its present form the GPIF results in extra payments by customers, but provides no real incentive to utilities to change their behavior. (TR-732) That being the case, one must conclude (1) the customers generally have been paying extra for what the utilities would have done anyway; and (2) while rewards paid by customers are real, concrete, and verifiable, the utilities' claims of fuel savings associated with exceeding GPIF targets (TR-807) are suspect at best.

Did the utilities refute these findings regarding the absence of broad and sustained improvements in base load efficiency effectively in their testimony?

No. Instead, in an effort to keep the status quo, the utilities offered non sequiturs and misdirection. FPL's witness, for instance, asserted that, as long as the Commission rewards scores that beat the targets and penalizes scores that fall below the targets, the GPIF is working as intended. (TR-801) This argument begs the question of whether the targets/points/payments under the GPIF as currently formulated have led to changes in behavior and resulting increases in base load unit efficiency. More critically, FPL sought to persuade the Commission that long term trends, or the absence thereof, are irrelevant to the workings of the GPIF. (TR-802-803) By arguing that the Commission should focus solely on targets, rewards, and penalties for individual periods, FPL hopes the Commission will limit its inspection to the trees immediately in front of it, and ignore the bigger picture of the forest the Commission wanted to affect when it designed the GPIF. FPL also pointed to evidence that, when viewed on an *overall* basis (either its entire system or the composite of all of the many FPL units that participate in the GPIF), the general direction of its units has been one of improvement. This shows only that the installation of a few repowered or new gas-fired combined cycle generating units with inherent superior availability and heat rate characteristics has, on a composite representation, a significant impact that can mask the failure of the GPIF program to accomplish broadly based, sustained improvements in the individual base load units' performance. (TR-872)

The other utilities concentrated their efforts on criticisms of details of Mr. Ross's proposed modification. OPC will address those arguments in a later section of this memorandum.

What steps should the Commission take in light of the evidence that the GPIF, as presently structured, leads to extra payments to utilities but does not provide an effective incentive to make lasting improvements to operating efficiencies?

Modifications to the GPIF should be designed to rectify the problem of payments borne by customers that neither result from nor lead to exceptional performance. The modifications should also reflect the fundamental premise that a utility has an obligation to be prudent and efficient; customers are entitled to service that meets that standard, and should not be required to pay extra for performance that does not go beyond that basic obligation. (TR-733-734)

Accordingly, the first step should be to amend the GPIF methodology in a way that assures that utilities will earn rewards only when they have performed in a manner that is materially, significantly better than the target that falls out from calculations derived—not from expectations based on the units' individual capabilities—but solely from the operating data for the most recent years of the unit's historical performance. Mr. Ross showed that this can be accomplished simply and easily by placing a "dead band" on the scale above and below the target for a projection period. (TR-734) A "dead band" is a designated range of points above and below the target scale. A score that falls within the range encompassed within the designated band results in no payments or penalties. If the utility's score falls outside the dead band, then the reward or penalty is calculated as though the dead band didn't exist; i.e., the utility would receive the full

reward or penalty associated with its score, without reference to the "dead band." The placement of a "dead band" would cure the existing, prejudicial (to customers) phenomenon of rewards in the millions of dollars for performance that is only nominally better than what in some circumstances has been undesirably poor historical performance. The dead band would also prevent rewards being paid for changes in performance that fall with in the variability associated with the imprecision inherent in setting targets based on historical data.

The dead band concept advocated by OPC witness James Ross would not require the utilities or the Commission staff to change any aspect of the manner in which targets are set, performance is monitored, and Generating Performance Incentive Points are calculated during a projection period. (TR-734) The dead band would affect only the determination of the amount that a utility would receive or would be penalized after the GPIF has otherwise been implemented in its present fashion. The dead band adopted by the Commission would be superimposed on the existing methodology at the final stage, for the purpose of ascertaining whether the utility's score, calculated in the usual way, falls inside or outside the band. Thus, the measure would not impose changes in the development of targets, or in the designation of which units to include, or in recordkeeping, or in presentations. The Commission can implement a dead band readily and immediately. (TR-736)

Is the concept of a dead band foreign to the Generating Performance Incentive Factor?

No. The current GPIF methodology already incorporates a dead band in the area of performance measurements. When the Commission decided to include a consideration of a unit's heat rate within the operation of the GPIF mechanism, it placed a "dead band" of 75 Btu/kWh around the measured changes in heat rate. In other words, a change in heat rate that neither improves nor deteriorates more than 75 Btu/kWh will not affect the calculation of rewards or penalties in a given projection period:

> "Finally, having reviewed the varying testimony on the subject, we have decided to place a "neutral band" of 75 BTU/kwh around the heat rate measurement, to reflect the limitations upon accuracy inherent in such measurements. Fluctuations within the neutral band will result in neither rewards nor penalties".
>
> Order No. 9558, issued on September 19, 1980 in Docket No. 800400-CI, at page 3.

While this "neutral band" is placed around the unit operating parameters rather than the Generating Performance Incentive Points, the concept is identical to that proposed by Mr. Ross.

How should the Commission implement a decision to incorporate a dead band in the calculation of penalties and rewards?

The Commission should distinguish between the adoption of the concept of the dead band and the implementation of that concept. The Commission should first see the concept of the dead band as a desirable measure with which to rectify the shortcoming of the GPIF revealed by Mr. Ross's analysis of GPIF-related data. The implementation of the concept requires a separate decision regarding the precise range to include within the

band. Mr. Ross advocated requiring a utility to exceed its target by a minimum of 5 points to qualify for a reward. The minimum of 5 points was geared to implementing the concept of "exemplary" performance, which, Mr. Ross explained, simply means in this context a score that is materially better than the target that falls rigidly out of historical performance data. (TR-791) In addition, imposing a dead band of a minimum of 5 points would ensure that the performance of the utility exceeds the variability that could be explained by the margin of error associated with projections based on historical performance. (TR-753-754)

On the penalty side of the scale, Mr. Ross advocated that the 'dead band" should be no more than 2.5 points. He based his "asymmetrical" dead band on the underlying proposition that a utility is obligated to provide efficient and prudent service; rewards should be correspondingly more difficult to receive, and penalties correspondingly less shielded by the dead band. (TR-757-758)

Is the concept of an "asymmetrical" range above and below a reference point foreign to the Generating Performance Incentive Factor?

No. Already, within the GPIF the Commission has incorporated an example of an "asymmetrical" term. In Order No. 9558, at page 2, the Commission described a modification to the original proposal for quantifying the ranges of possible improvements above and degradations below the targeted availability factor:

> " . . .and the recommendation now provides that potential improvement and degradation ranges from the equivalent availability performance indicator be determined independently of each other, so that the "downside" potential is no longer automatically equivalent to the amount of potential improvement."

In other words, as adopted by the Commission, the range of potential improvements and degradations to the availability target can be "asymmetrical." Like the "dead band" that the Commission placed around the heat rate measurements in the GPIF manual, this "asymmetrical" treatment of the "upside" and "downside" ranges on availability occurs in the operating parameters as opposed to the scoring points; but, also like the heat rate example, the concept is precisely the same as that encompassed in Citizens' proposal.

The utilities criticized the asymmetrical nature of Mr. Ross's proposed dead band set points. In addition, the utilities asserted that using Mr. Ross's minimum of 5 points would virtually ensure that no utility would ever receive a reward.

The choice of a "symmetrical" or "asymmetrical" dead band flows from judgment and policy considerations. Mr. Ross supported the concept of using more of a "stick" on the penalty side, based on his view that the set points should reflect the basic obligation of a utility to operate efficiently. (TR-757-758). However, he emphasized that, in the event the Commission disagrees with his view, it should modify the specific dead band that he proposed rather than abandon the measure because of disagreement with the asymmetrical approach. (TR-758). In response to a question from Commissioner Carter, Mr. Ross said that changing the parameters of the dead band to reflect positive and

negative set points that are equidistant from the target would be a "reasonable modification" of his original proposal. (TR-758)

The designation of the number of GPIP points to include within the dead band is similarly a matter of judgment. During cross-examination, counsel for one of the utilities appeared to assert that the use of judgment based on experience and expertise is a weakness of Mr. Ross's proposed modification. However, the GPIF is already rife with terms that were "judgment" decisions. For example, the dead band surrounding heat rate changes already within the GPIF methodology is 75 Btu per kWh—not 60, not 90, but 75—based ultimately on the Commission's judgment, following technical input, regarding the degree of change that should constitute a threshold for inclusion in the GPIF formula. The heat rate targets are based on three years of historical data—not two, not five, but three—based on the Commission's judgment, following technical input, regarding the appropriate time frame to use as the basis for future targets. OPC's Mr. Ross advocated a dead band of a minimum of 5 points as representing, in his opinion, the point at which the utility had demonstrated "exemplary" performance, i.e. performance materially better than its target. However, if the Commission's judgment is that (for instance) an increment of 4 points on the scale above the target serves the role better, it should modify Mr. Ross's recommendation rather than decline to implement the needed concept.

During cross-examination Mr. Ross was asked to agree that under his approach a utility could improve by small increments year-to-year and not receive a reward because

of the dead band. (TR-780) The first response to this hypothetical question is that in 25 years no utility has shown such a steady pattern of improvement, despite the availability (and frequent payment) of rewards. However, it bears noting that the dead band is the first step of OPC's recommended modifications to the GPIF. Mr. Ross also advocated that the Commission evaluate the possibility of establishing minimum values that a utility would have to meet to qualify for a reward, to work in tandem with the dead band. The same approach could serve to answer the hypothetical regarding a sustained improvement: the Commission could establish a threshold value of strong performance beyond which the utility would qualify for a reward, whether or not it exceeded the increment over the past performance designated by the dead band. In any event, however, the dead band is a needed first step.

Did the remaining arguments by the utilities support continuing the status quo?

No. As stated above, the utilities' arguments amounted to non sequiturs and misdirection. For instance, PEF witness Oliver protested that his company does not "game" the GPIF. (TR-840) OPC has not claimed that his company does so. Rather, an analysis of the data reveals that the GPIF as currently structured can and does lead to undesirable results because of characteristics inherent to its current design. OPC seeks a structural modification, not a policing of misbehavior.

Witness Oliver also discussed a "total cost" approach to the GPIF. (TR-837) He emphasized the characteristics of physical equipment that result in cyclical degradations

and replacements. (TR-837) The testimony misses the point of Citizens' proposal. Nothing in Citizens' proposal will alter the manner in which the GPIF targets are set or the manner in which the utilities' performance is measured. The cycles of refurbishment will continue. The applicability of a total cost approach to maintenance will be unaffected. The only thing that will change is that the dead band will prevent customers from paying extra for performance that is ordinary.

Issue 22: If the "dead band" amendment to the GPIF mechanism is implemented by the Comission, should it be applied for the current year so that the rewards or penalties are applied commencing January 1, 2007?

Citizens: *Yes. The dead band proposal does not affect the selection of units, the setting of targets or the scoring of performance—only the determination of whether performance will be rewarded or penalized. Protecting customers against payment of rewards in the absence of material improvements will not prejudice the utilities.*

As testified by Mr. Ross, and as explained further in this brief, the implementation of the dead band concept will occur at the end of the existing GPIF protocol. It would have no effect on the units to be reviewed, or the targets that were set for calendar year 2006. The only impact would be to set the bar higher for rewards—and the same measure would protect the utilities from penalties if they miss their targets. The Commission can and should apply the "dead band" to results for calendar year 2006.

CONCLUSION

For the foregoing reasons, the Commission should act expeditiously to incorporate a "dead band" in the determination of GPIF rewards and penalties.

Respectfully submitted
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Public Counsel

s/ Joseph A. McGlothlin
JOSEPH A. MCGLOTHLIN
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DOCKET NO. 060001-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Citizens' Post-Hearing Memorandum in Support of Their Proposed Modification of the Generating Performance Incentive Factor has been furnished by electronic mail and U.S. Mail on this 17th day of November, 2006, to the following:

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