State of Florida

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: January 16, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (McNulty, Draper, Lester, Matlock, Sickel)
Division of Competitive Markets & Enforcement (Coston, Fisher, Vinson)
Office of the General Counsel (Bennett, Young)

RE: Docket No. 060658-EI – Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers $143 million.

AGENDA: 01/29/08 – Regular Agenda – Decision on Motion for Reconsideration – Oral Argument Requested – Participation Dependent on Commission Vote on Issue 1

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060658.RCM.DOC

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Case Background

On October 25, 2007, the Office of Public Counsel (OPC) filed a Motion for Reconsideration of Final Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in this docket. Simultaneously, OPC filed a Request for Oral Argument. On November 1, 2007, Progress Energy Florida (PEF) filed its Response to Citizens Motion for Reconsideration and Request for Oral Argument. The motion and responses were timely filed pursuant to Rule 25-22.060, Florida Administrative Code (F.A.C.)

At issue in the original proceeding was whether PEF had acted prudently in procuring the most economical coal to operate its Crystal River Units 4 and 5. OPC had brought a petition

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arguing that since 1996, PEF should have been burning a mix of 50 percent bituminous coal and 50 percent sub-bituminous (known as Powder River Basin or PRB) coal. PEF has burned 100 percent bituminous coal at its Crystal River Units 4 and 5 since commencement of operation with the exception of some limited test burns.

PEF asserted that it acted prudently. In support of its position, PEF offered evidence of numerous factors it considered in determining the type of coal it would burn at its Crystal River Facility.

On October 10, 2007, the Commission issued its final order, Order No. PSC-07-0816-FOF-EI. The 57 page decision found PEF to be imprudent in certain of its management decisions. As a result of the imprudence, the Commission required PEF to refund $12,425,492, plus interest, to its customers. The Commission decision to require the refund of $12,425,492 instead of the $143 million request by OPC was based on a blend of 20 percent PRB coal and 80 percent bituminous coal. OPC's Motion for Reconsideration now asks the Commission to require a refund based on a blend of 30 percent PRB coal and 70 percent bituminous coal.

This recommendation addresses OPC's Motion for Reconsideration and its Request for Oral Argument. The Commission has jurisdiction over this matter pursuant to Sections 366.01, 366.04, 366,041, 366.05, 366.06 and 366.07, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant OPC's Request for Oral Argument?

Recommendation: No. The Commission should deny OPC's request for oral argument on its motion for reconsideration. The issues are thoroughly addressed in the parties' pleadings and oral argument would not aid the Commission in its decision. (Bennett)

Staff Analysis: OPC timely filed its Request for Oral Argument. In its request, OPC asserts that oral argument will aid the Commission in comprehending and evaluating the points raised in its motion. According to OPC, certain evidence was overlooked or misapprehended and when viewed properly, will result in a different outcome. OPC argues that the factual matters treated within the motion are complex, and the change in refund amount is significant. Therefore, OPC concludes, oral argument is warranted.

PEF timely filed its response to OPC's request for oral argument. PEF asserts that oral argument is not appropriate, nor would it be helpful to the Commission because OPC's Motion for Reconsideration is wholly insufficient on its face. PEF suggests that because OPC's motion is improper, OPC would likely use oral argument as an opportunity to inappropriately testify and reargue positions that the Commission has already considered and rejected.

Staff believes that OPC's motion and PEF's response fully address the issues, and further argument would not assist the Commission in understanding and evaluating the motion. Thus, staff recommends that OPC's request for oral argument be denied.

Staff notes that the Commission has the discretion to grant or deny oral argument. If the Commission decides to hear from the parties, staff recommends that the Commission allow 10 minutes per side.

Issue 2: Should the Commission grant OPC's Motion for Reconsideration of Order No. PSC-07-0816-FOF-EI?

Recommendation: No. The Commission should deny the motion for reconsideration. OPC has failed to identify a point of fact or law that was overlooked or which the Commission failed to consider in Order No. PSC-07-0816-FOF-EI. (Bennett, McNulty)

Staff Analysis:

Standard of Review

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. This standard has often been cited by the Commission in considering motions for reconsideration. In prior orders, the Commission has relied on several Florida cases as precedent. OPC and PEF cite those cases in support of their motion and responses. A complete review of these cases will provide insight into the limited nature of motions for rehearing.

PEF cites State ex. Rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1959), in its response. Jaytex sets forth the limited nature of motions for reconsideration. In Jaytex, the court stated:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision. Judges are human and subject to the frailties of humans. It follows that there will be occasions when a fact, a controlling decision or a principle of law even though discussed in the brief or pointed out in oral argument will be inadvertently overlooked in rendering the judgment of the court. There may also be occasions when a pertinent decision of the Supreme Court or of another District Court of Appeal may be rendered after the preparation of briefs, and even after oral argument, and not considered by the court. It is to meet these situations that the rules provide for petitions for rehearing as an orderly means of directing the court's attention to its inadvertence.
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> * * *
>
> Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

Id. at 818-819. Furthermore, the court explained that it is not necessary to respond in its opinion to every argument and fact raised by each party, stating:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.
>
> It is not the purpose of these remarks to discourage the filing of petitions for rehearing in those cases in which they are justified. If we have, in fact, inadvertently overlooked something that is controlling in a case we welcome an opportunity to correct the mistake. But before filing a petition for rehearing a member of the bar should, as objectively as his position as an advocate will permit, carefully analyze the law as it appears in his and his opponents brief and the opinion of the court, if one is filed. It is only in those instances in which this analysis leads to an honest conviction that the court did in fact fail to consider (as distinguished from agreeing with) a question of law or fact which, had it been considered, would require a different decision, that a petition for rehearing should be filed.

Id. at 819.

PEF also cites to Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959). In Sherwood, the court, citing the Florida Supreme Court's opinion in Florida Land Rock Phosphate Co. v. Anderson, 39 So. 397 (Fla. 1905), stated:

> . . . the proper function of a petition for a rehearing is to present to the court some point which it overlooked or failed to consider by reason whereof its judgment is erroneous . . . .

Both OPC and PEF reference Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). In Diamond Cab, the Court stated:

> The purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. . . . It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order. . . .

Both parties also cite Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974), in which the Court overturned an order reconsidered by the Commission. Bevis involved a matter in which the Commission had originally denied a statewide certificate of public necessity and convenience for transportation of household goods. The Commission subsequently granted a motion for reconsideration reversing its decision and granting the certificate. The Commission's basis for granting the motion for reconsideration was that:

> (1) That the evidence discussed above had been reconsidered in light of the "relaxed" standard of proof for household goods carriers' applications (a facet already considered), and

> (2) that extraordinary population growth in a mobile society tends to lessen the adverse impact on existing carriers.

The Florida Supreme Court, in reviewing the Commission's decision, noted

> [t]his order did not include any new findings of fact, nor did it recede from the findings made in the previous order; it merely stated that the PSC changed its mind upon re-examining the evidence in light of the 'relaxed' standards applicable -- which were the very same standards which the PSC stated it was following when it entered its original order denying the application.

The Court overturned the Commission's decision, stating that "[t]he only basis for reconsideration noted in the instant cause was the reweighing of the evidence discussed above. This is not sufficient."

OPC and PEF also cite Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981), in which the court reviewed a trial court's denial of a motion for rehearing. In Pingree, the court, in denying the Motion for Reconsideration, also said, "[t]he purpose of a motion for rehearing is to give the trial court an opportunity to consider matters which it failed to consider or overlooked." From the Pingree decision, we see that motions for rehearing requested after a non-jury trial are not favored. In considering motions for reconsideration, the Commission has consistently stated that the standard of review for a motion for reconsideration is:

> whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817(Fla. 1st DCA 1958).[1]

OPC's Motion for Reconsideration

OPC states that its motion for reconsideration addresses the significant mistakes and matters that the Commission overlooked or misapprehended in reaching its decision to require PEF to refund $12,425,492 based on a less expensive blend of coal that could have been burned at Crystal River Units 4 and 5. The Commission found that blend should have been 20 percent PRB coal and 80 percent bituminous coal. OPC argues that the blend should be 30 percent PRB coal and 70 percent bituminous coal. According to OPC, the Commission overlooked or misapprehended three points of key evidence when it established the percentage of PRB coal to include in the blend of fuel for burning at PEF's Crystal River Units 4 and 5. According to OPC, the Commission misapprehended the Sargent & Lundy Study. OPC also claims the Commission

[1] Order No. PSC-07-0783-FOF-EI, issued September 26, 2007, in Docket No. 050958-EI; Order No. PSC-07-0561-FOF-SU; issued July 5, 2007, in Docket No. 060285-SU; Order No. PSC-06-1028-FOF-EU, issued December 11, 2006, in Docket No. 060635-EU.

misapprehended the ramification of PEF witness Toms' testimony. Finally, OPC charges that the Commission overlooked exhibit numbers 223 and 224. According to OPC, these pieces of evidence require the Commission to reconsider its final order and find that PEF could have burned a blend of 30 percent PRB coal and 70 percent bituminous coal at Crystal River Units 4 and 5, thus requiring a larger refund amount to PEF's customers.

PEF's Response

PEF responds that the Commission did not overlook or ignore the argument that a 30 percent blend of PRB should be the basis for the refund order. According to PEF, the Commission expressly considered, debated, and voted against a motion to re-open the proceeding based, in part, on whether a 30 percent PRB blend should have been used. PEF asserts that the arguments OPC used for its motion for reconsideration are the same as it used in the hearing when urging the Commission to require a refund of a 50 percent blend of PRB coal. PEF asserts that the Commission is not permitted to reweigh the evidence on a motion for reconsideration.

Furthermore, PEF asserts that the record evidence as a whole does not support OPC's motion for reconsideration. PEF asserts that when the evidence OPC singles out for reconsideration is viewed as a whole with all the other evidence, the motion is not supportable.

Staff's Analysis

Staff believes that OPC applies the incorrect standard of review for its motion for reconsideration. In essence, OPC is asking the Commission to reweigh the evidence it already considered. A review of the transcript makes it clear that the Commission considered the Sargent & Lundy report, PEF witness Toms, and exhibits 223 and 224.[2] OPC uses words like "misapprehend," "mischaracterize," "import," and "assuming" to support its motion. As the discussion below demonstrates, those words are synonymous with asking the tribunal to reweigh the evidence. Thus, OPC is not asking the Commission to look at newly discovered evidence or evidence that the Commission missed the first time around, but is instead asking the Commission to reweigh the evidence, which is not proper for reconsideration. See Bevis 294 So. 2d at 317.

Moreover, OPC is not entitled to reconsideration just because the Commission did not address in its order every piece of evidence admitted into the record. As the court stated in Jaytex:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will

[2] The depth of the Commission's review and the type of evidence it considered is evidenced in the transcript of the July 31, 2007 agenda conference. For example on page 8 of the transcript, the Commission discusses whether to require a refund based on a 30 percent blend of PRB coal and in so discussing, refers to some of the very testimony OPC claims the Commission overlooked: "Simply put, there's sufficient testimony in the record to duly support the fact that the uprate can be maintained by burning a 70/30 blend when it's cost-effective to do so. And, again, that's supported on numerous instances by witness Sansom, PEF's own consulting engineer, Sargent & Lundy, and PEF's own witness." After weighing all the evidence in the record, the Commission rejected a refund based on a 30 blend percent blend of PRB coal and instead found that the refund should be based on a 20 percent blend of PRB coal.

> discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.

Further, the Jaytex court opined that a petition for rehearing should be before the court only in those instances when the question of law or fact, had it been considered by the court, would require a different decision. This is an instance in which the Commission considered the facts as evidenced by the record, and the disputed evidence would not require a different decision. Thus, staff recommends that OPC's motion for reconsideration be denied. A discussion of each point raised by OPC is set forth below.

The Sargent & Lundy Study

On page 28 of the Order, as part of its review of evidence regarding the megawatt (MW) capacity of Crystal River Units 4 and 5, the Commission stated:

> In 2005, PEF hired Sargent & Lundy to assess the use of PRB coal at CR4 and CR5. That study indicated that a blend under 30 percent was likely to prove cost effective. Blending off-site was recommended in that report as well. In 2006, PEF successfully completed a short-term test burn of a lower blend of PRB (20 percent) and bituminous coal.

According to OPC, the Commission overlooked a passage of the study which supported a higher blend of PRB coal. OPC argues that the Commission "misapprehended and mischaracterized key evidence that, when properly viewed on reconsideration, supports the ability of the units to accommodate successfully far more than the 30% PRB ratio that the Commission attributes to the study . . . ."

PEF counters by stating that OPC selectively quotes from the study to claim the study supports a 30 percent PRB blend. PEF asserts that the Commission was aware that the Sargent & Lundy study was a "high level" and "first cut" study of PRB blends. PEF states that the Commission did not rely entirely on the study to determine the appropriate PRB blends. PEF urges the Commission to look at the entirety of its order to understand what the Commission relied upon to reach its conclusion. For instance, according to PEF, the Commission relied on actual test burns, and expert witnesses who testified that test burns were necessary to determine how the units would operate. PEF concludes that the Commission did not "misapprehend" or "mischaracterize" the Sargent & Lundy study but rather gave it the weight the Commission believed the study deserved.

Discussion

The terms "misapprehend" and "mischaracterize" by definition mean that the evidence was wrongly apprehended or wrongly characterized.[3] To "misapprehend" or "mischaracterize"

[3] "mis-. indicates: 1. Error or wrongness; for example, misspell. 2. Badness or impropriety; for example, misbehave, misdeed. 3. Unsuitableness; for example, misalliance. 4. Opposite or lack of; for example, mistrust. 5. Failure; for example, misfire. . . ." The American Heritage Dictionary of the English Language, New College Edition, 1981 by Houghton Mifflin Company p 837.

evidence means the Commission looked at the evidence. The standard for granting a motion for reconsideration is if the tribunal overlooked the evidence. If you look at evidence but "misapprehend or mischaracterize" it, you have not overlooked it. Even if OPC were correct that the Commission "misapprehended" or "mischaracterized" the Sargent & Lundy report, it cannot be said then, that the evidence was overlooked. The Commission cannot disregard or ignore evidence if it acknowledged its existence in the order. After reviewing the transcript, it is clear that the Sargent & Lundy study was considered by the Commission.[4] OPC's complaint, then, is that it disagrees with the Commission's evaluation of the evidence. It is not appropriate, however, to reargue matters that have already been considered. OPC did not meet the established test for reconsideration.

Furthermore, reading the passage from page 28 quoted above in context with the remainder of the Order, it is apparent that the Sargent & Lundy study was considered in context with other testimony and evidence presented at the hearing. For instance, in the last two paragraphs of page 28 of the Order, the Commission evaluated evidence of two separate test burn results, the Sargent & Lundy study, and a PEF Strategic Engineering Group's report. It is not just one piece of evidence that the Commission relied upon in determining the appropriate amount of refund, it was the record as a whole. The Sargent & Lundy study was considered and given the appropriate weight in light of all of the record evidence.

PEF Witness Toms' Testimony

As part of its second argument for reconsideration, OPC asks the Commission to assume that when PRB coal containing 8,800 Btus per pound is blended with Central Appalachian coal of 12,500 Btu per pound, the blend would be 11,390 Btus per pound. OPC then asks the Commission to apply that assumed fact to the testimony of PEF witness Toms. Witness Toms stated that falling below 11,000 to 11,300 Btu would cause a loss in MW capacity at the two units. OPC argues that the Commission relied upon witness Toms' testimony in reaching the decision on the percentage of PRB coal to be burned at Crystal River Units 4 and 5. While relying on the testimony of witness Toms, OPC asserts that the Commission overlooked the fact that the criteria of 11,000 to 11,300 Btu per pound of coal is met with a blend of 30 percent PRB coal and 70 percent bituminous coal. That blend, according to OPC, would be above the breakpoint that the witness says was necessary to maintain the output at the units.

PEF contends that asking the Commission to assume blends of coal would equal 11,390 Btus per pound is improper because it is not record evidence. PEF points out that nowhere does OPC's motion refer to any evidence in the record to support this argument. PEF concludes that this assumption is not record evidence and is therefore improper on a motion for reconsideration.

PEF also argues that although OPC asserts no adjustments should be made to the blend of 30 percent PRB coal, the expert testimony in the record differs from OPC's position. According to PEF, experts testified to differences between PRB and bituminous coal such as higher PRB moisture content that required test burns to determine the appropriate impact of particular coals on the boiler. PEF concludes that the "assumption" that the 30 percent blend had no operational impacts on the two units cannot be accepted.

[4] Transcript pages 8, 11, 16, 38, 42, 52, 89, 98 reference the Sargent & Lundy study.

Finally, PEF asserts that the Commission did not rely merely on which blend would generate sufficient megawatts. There were other factors which the Commission relied upon to make its decision, according to PEF. PEF points to a portion of the order at page 30 in which the Commission explained that particle size and silo capacity also limit the production of the units. PEF concludes that the Commission considered the entire record when it reached its conclusions in the final order that a 20 percent blend is appropriate.

Discussion

OPC's motion does not refer to any record evidence demonstrating that a blend of coal containing 30 percent PRB coal and 70 percent bituminous will equal a coal with a Btu content of 11,390 Btus per pound. Rather, in its motion, OPC asks the Commission to assume that this fact is correct and then apply that fact to the testimony of PEF witness Toms. By not pointing to a fact or matter of law that the Commission overlooked, OPC is merely expressing its disagreement with the conclusion drawn by the Commission. This is not proper for a motion for reconsideration. Jaytex, 105 So. 2d at 818. ("Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion. . . .")

Furthermore, failing to present new facts or facts that the Commission overlooked causes the motion to fail under Bevis and Pingree. In Bevis, the court was concerned that there were not any "new finding of fact, nor did it [the reconsideration order] recede from the findings made in the previous order . . . ." In Pingree, the Court was concerned that the motions and affidavit had "merely set forth matters which had previously been considered by the trial court." Thus, courts look to whether there are actual facts to support a reconsideration.

Even if OPC could identify record evidence showing that a 30 percent blend garners 11,390 Btus, this fact does not require a different decision. As PEF noted, it is not merely the coal's Btu content that the Commission considered in reaching its conclusion. On page 30 of the Order the Commission stated:

> In contrast, PEF offered testimony of the actual experience at Crystal River. PEF witness Toms testified as to the day-to-day operations at CR4 and CR5, and the factors that are crucial to the units operating with the performance reliability that they have shown. For example, witness Toms testified that if the fuel rating falls lower than the range of 11,000 to 11,300 Btu/pound, CR4 and CR5 are not able to operate at over pressure. He explained that the particle size of the fuel entering the boiler is crucial -- the smaller the better. He stated that in his experience five pulverizers are not sufficient to maintain the units at full capacity. Alternatively, the fuel grind might be set for a larger particle size in order to increase the flow through the pulverizer, but the pulverizers must grind to a size that does not slag the boiler.
>
> We find the testimony of witness Toms to be persuasive. . . . Based on actual operating experience, witness Toms testified that with only five pulverizers available, the units cannot produce the expected 750 or 775 MW. The record indicates that particle size and silo capacity (or through-put) limit the production

> of the utility. Witness Barsin's testimony addressed design calculations. It does not sufficiently address particle size, or show why limits on silo capacity would not curtail the steam production

In other words, it is not just Btu content that affects the MW capacity, or the Commission's decision.

Without repeating the entire Order, the Commission evaluated and weighed the entire record in reaching its decision. Among other things, it considered: test burns at the two units[5]; the actual experiences of the units in burning a coal blend[6]; the PEF Strategic Engineering Group report[7]; the capital expenditures necessary to use blends of coal[8]; the proximity and affect of PRB coal to the nuclear unit[9]; and transportation constraints associated with rail and waterborne delivery of coal.[10] Even if the Commission could make the assumption that a 30 percent blend of PRB coal with 70 percent of bituminous coal would result in a coal with a Btu content of 11,390 Btu per pound, this assumed fact would not require a change in the Commission's decision.

Exhibits 223 and 224

OPC also argues that the Commission "overlooked the import of Hearing Exhibits 223 and 224." According to OPC, the exhibits contain representations made by PEF to the Florida Department of Environmental Protection that indicate PEF could burn a higher blend of PRB coal than 20 percent. According to OPC, the Commission did not take either exhibit into account in the analysis memorialized in its order.

PEF responds that the Commission did consider the exhibits. According to PEF, the Commission devoted an entire section of its final order to environmental permitting issues. PEF argues that the evidence reflects that DEP would not have allowed any different blend of PRB without a further test burn. PEF also urges that the complete technical evaluation contained in Exhibit 224 supports the Commission's decision.

Discussion

Staff believes that Jaytex is controlling in this portion of OPC's motion. In denying the motion for reconsideration, the Court stated:

> An opinion should never be prepared merely to refute the arguments advanced by the unsuccessful litigant. For this reason it frequently occurs that an opinion will discuss some phases of a case, but will not mention others. Counsel should not from this fact draw the conclusion that the matters not discussed were not considered.

[5] Order p. 28
[6] Order p. 30
[7] Order p. 28
[8] Order p. 31, 35-36
[9] Order p.31- 32
[10] Order p. 24-26, 37-38

Id. at 819. While the Commission did not specifically reference Exhibits 223 and 224 in its order, it extensively discussed environmental permitting in its order, which is the subject of those exhibits.

Further, OPC states that the Commission "overlooked the *import* of Exhibits 223 and 224." (emphasis supplied) The very language that OPC uses in its motion suggests that OPC is asking the Commission to reweigh the evidence, not to consider evidence the Commission previously missed. That is improper for a motion for reconsideration. See Bevis, 294 So. 2d at 315.

Conclusion

OPC has failed to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. Staff recommends that OPC's motion be denied.

Issue 3: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon the expiration of the time for appeal. (Bennett)

Staff Analysis: This docket should be closed upon the expiration of the time for appeal.