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January 6, 2004

BY HAND DELIVERY

040001-EI

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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. 030001-EI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket on behalf of Tampa Electric Company are fifteen (15) copies of each of the following:

00170-04

1. Tampa Electric Company's Motion for Reconsideration; and

00171-04

2. Tampa Electric Company's Request for Oral Argument.

Also enclosed is a diskette containing the above documents 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,

James D. Beasley

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.	))))	DOCKET NO. 030001-EI FILED: January 6, 2004

040001-EI

TAMPA ELECTRIC COMPANY'S
MOTION FOR RECONSIDERATION

Tampa Electric Company ("Tampa Electric" or "the Company"), pursuant to Rule 25-22.060, Florida Administrative Code, moves the Commission to reconsider its Order No. PSC-03-1461-FOF-EI ("Order No. 03-1461" or "the order"), issued on December 22, 2003 in the above proceeding and, as grounds therefor, says:

Nature of Order No. 03-1461

1. Order No. 03-1461 is a final order of the Commission setting fuel and purchased power cost recovery factors to be used by investor-owned electric utilities during calendar year 2004. Tampa Electric urges this Commission to reconsider only that portion of Order No. 03-1461 which provides for a $8,416,800 ("$8.4 million") penalty to Tampa Electric's recoverable fuel and purchased power costs despite its finding that all of the Company's fuel and purchased power costs at issue in this proceeding were prudently incurred.

Standard of Review on Reconsideration

2. The purpose of a petition for rehearing or reconsideration is to bring to the attention of the trier of fact some factual or legal point it overlooked or failed to consider when it rendered its order in the first instance. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). This motion identifies material factual, legal and policy considerations overlooked by the Commission in the order.

Bases for Reconsideration

Errors of Law and Omissions of Fact

3. As set out in more detail below, the Commission erred in denying recovery of prudently incurred costs and by performing a base ratemaking function in the context of the narrowly defined fuel and purchased power docket. Simply put, the Commission's decision in the fuel and purchased power proceeding must be confined to fuel and purchased power costs. Consequently, the consideration of costs included in base rates is simply beyond the proper scope of this proceeding. However, assuming for the purposes of argument that the Commission appropriately considered savings in operation and maintenance ("O&M") costs, it failed to consider a number of additional cost factors that more than offset the hypothetical "savings" the Commission identified in its order. Florida law and basic fairness dictate that once the Commission crossed over into consideration of base rate costs, it could not confine its consideration to only one estimate of one category of expenses in the ratemaking formula.

4. It is important to consider the full context of this matter. On December 6, 1999, Tampa Electric entered into a Consent Final Judgment ("CFJ") with the Florida Department of Environmental Protection ("DEP") and on February 29, 2000 entered into a Consent Decree ("CD") with the United States Environmental Protection Agency ("EPA") and the Department of Justice ("DOJ"). The CFJ and CD require that Tampa Electric take a number of actions which require significant investments and increased expenses. These actions include: the cessation of all coal-fired operations at Gannon Station by no later than December 31, 2004; the repowering of certain Gannon Station capacity from coal to natural gas; and the implementation of a number of additional pollution control measures at Big Bend Station.

5. The Commission, in Order No. 03-1461, acknowledged that under the CFJ and CD, Tampa Electric must cease operating coal-fired generation at its Gannon Station no later than December 31, 2004. The order correctly determined that Tampa Electric's decision to shut down Gannon Units 1 – 4 when it did was prudent and that all of the replacement fuel costs associated with the shut down were prudently incurred (see page 20, Order No. 03-1461):

> Based on the evidence in the record we are persuaded that TECO's decision to shut down Gannon Units 1 - 4 when it did was prudent.
>
> * * * * *
>
> Based on our finding that TECO's decision to shut down Gannon Units 1 through 4 was a prudent decision and on Ms. Wehle's testimony supporting the reasonableness of the replacement fuel costs, we find that the replacement fuel costs associated with the early shut down of Gannon Units 1 through 4 were prudently incurred. (Emphasis supplied.)

These decisions were the only decisions properly before the Commission in this proceeding relative to the shutdown of Gannon Units 1 - 4.

Disallowance of Prudently Incurred Costs was in Error

6. The end result of the Commission's decision was to disallow Tampa Electric's recovery of $8.4 million of prudently incurred costs. This disallowance was imposed despite the Commission's specific finding that the Company's decisions, which led to the need to purchase replacement power, were prudent, and the Commission's corresponding conclusion that the replacement power costs were prudently incurred. The Commission cannot disallow prudent expenses for essential services.

7. A utility Commission's obligation to allow utility expenses that are prudently incurred has been recognized on numerous occasions. For example, see Zia Natural Gas Co. v. New Mexico Public Utility Commission, 998 P.2d 564 (NM 2000) (disallowance of a prudent

expense is arbitrary); Mountain States Telephone & Telegraph v. Corporation Commission, 653 P.2d 501 (NM 1982) (the Commission could not disallow prudent expenditures); In re: Consumers Power Company, Case No. U-9977-R WL 273717 (Michigan PSC 1993), 3/31/93 (the utility has a right to recover its reasonably and prudently incurred costs) and In re: Frontier Energy, Docket No. G-40, Sub. 15 WL 584304 (N.C.U.C. 2001) (recognizing right to recover prudently incurred costs).

In Zia Natural Gas, supra, the New Mexico Supreme Court said:

> . . . the Commission has an obligation to allow utility expenses that are necessary in providing utility service that benefit ratepayers and are prudently incurred.

Failure to Consider All Relevant Costs

8. In deciding nonetheless to disallow recovery of $8.4 million of prudently incurred costs, the Commission overlooked the full context, and therefore, the total costs Tampa Electric has incurred and will incur to comply with the CFJ and CD. As a consequence, the Commission miscalculated the so-called O&M savings used to offset the recovery of prudently incurred costs. As will be set out more fully herein, although Order No. 03-1461 mentioned both the CFJ and CD and acknowledged certain aspects of the obligations of the CFJ and CD, it overlooked the full effect of these legal obligations.

9. The Commission erred by going beyond the issues which were properly before it in the fuel and purchased power cost recovery proceeding by considering, in a vacuum, speculative estimates of only one category of the many additional costs and investments which have a direct link with Tampa Electric's compliance with the CFJ and CD by shutting down coal-fired operations at Gannon Station and repowering Gannon Unit 5 into Bayside Unit 1 and Gannon Unit 6 into Bayside Unit 2.

10. The Commission's findings on pages 20-21 with respect to certain savings should be reconsidered. The Commission on page 20 said:

> We also recognize that TECO's decision to shut down the Gannon units when it did yielded savings to the Company in O&M expenses.

The Commission then found that these savings were $10,521,000 and adjusted the amount by 20% as a "fair and reasonable sharing" of these savings resulting in a deduction of $8.4 million to overall fuel and purchased power costs.

11. The Commission may not adjust fuel and purchased power costs based on an isolated, out-of-context consideration of a single category of base rate costs. A consideration of the totality of all facts and circumstances including the total costs and investments Tampa Electric has incurred and will continue to incur to comply with the CFJ and CD would dictate that no adjustment was warranted. Furthermore, it was not appropriate to consider such costs in a fuel and purchased power cost recovery proceeding. This type of evaluation may be performed only during a full rate proceeding when all expenses and investments are considered. As noted above, however, assuming arguendo that base rate costs may be considered in a fuel proceeding, the Commission erred in confining its consideration to one aspect of many relevant costs in its calculation of the hypothetical "savings" used to offset prudently incurred fuel and purchased power costs.

The Commission acknowledged the internal inconsistency of its adjustment, saying:

> We are confronted with our findings that TECO's decision to shut down the units when it did was prudent and based on sound economic, reliability and safety concerns which support TECO's argument that no offsetting should occur.

12. The Commission took one category of expenses, O&M expenses, associated with one single generating plant from the Company's entire system in a fuel cost recovery proceeding, not a full rate review, and it then disallowed $8.4 million gleaned from a single document (see Composite Exhibit 32, Document MJM-5). The document the Commission relied upon was prepared by Tampa Electric in the fall of 2002 as the Company began its preliminary evaluation of shutting down Gannon Units 1 – 4. It was developed to evaluate various shut down dates and their associated potential company and ratepayer impacts using estimates only. The impacts related only to Gannon Station, not the repowered Bayside Station that would replace it or any other components of the entire Tampa Electric system. The Commission then selected a number from the document that represented the estimated O&M reductions at Gannon Station from the scenario that was the closest to the actual shutdown dates. That number, $10,521,000, became the estimated "O&M savings" that the Commission determined the Company derived by shutting down Gannon Units 1 – 4 and then it was split 80/20 between ratepayers and the Company. The affect was a disallowance or penalty of $8.4 million.

The use of Tampa Electric's budget document (MJM-5) without consideration of the context of that document containing budgeted figures for a portion of one of Tampa Electric's three generation stations contravenes the principles of fairness set out in GTE Florida, Inc. v. Clark, et al., 668 So.2d 971 (Fla. 1996) discussed in detail below. In making this decision focusing only on budgeted O&M costs for Units 1 - 4 at Gannon Station, the Commission failed to consider increases in other costs related to the same transaction including most specifically increases in O&M costs related to the Company's other generating units.

Tampa Electric's Witness William Whale demonstrated that the net O&M savings shown on MJM-5 was a preliminary estimate that did not, in fact, occur when the totality of

O&M expenses is considered. Mr. Whale put the O&M savings at Gannon in perspective by showing that from the year 2000, the total Energy Supply budget has been about $100 million but the actual amount spent by the Company in each year has exceeded the budget. More specifically, he compared the budget to actual results for each year as follows (Tr. 439):

Year	Budget	Actual
2000	$ 104	$ 112
2001	$ 107	$ 110
2002	$ 117	$ 125
2003	$ 102	

Mr. Whale stated that based on actual figures to date and projections to year end 2003, the Company expected to spend $110,274,000 in O&M expenses. (Tr. 440) He further pointed out that half of that amount is for Big Bend Station and $3.3 million is for Gannon Station. (Id.)

Mr. Whale further testified that in 2003, while the Company budgeted $1 million for forced outages at Gannon Station, up through June it had already spent two million. He observed: "We had overspent by a million dollars just addressing the forced outages at Gannon this year." (Tr. 441)

Mr. Whale also pointed out that in the budgeting process, senior management constantly challenges management to cut "costs to the bone" and still provide safe and reliable electric service. He pointed out the success of this effort in bringing on line both the Polk and Bayside Power Stations without a rate increase. (Tr. 443-444)

13. The Commission's decision contravenes established ratemaking policy and effectively denies Tampa Electric full recovery of prudently incurred fuel and purchased power costs. By focusing only on estimated O&M "savings" associated with the shut down of Gannon Units 1 - 4 and ignoring all of the other factors, the Commission has administered an incomplete

and erroneous calculation of "savings." The principle effect of this has been to harm the economic interests of Tampa Electric and to provide an unwarranted penalty for a prudent action.

14. Unless the Commission makes a calculation of the combined effect of all of the factors directly related to compliance with the CFJ and CD, the Commission cannot know if any "savings" in fact exist. To penalize Tampa Electric on the basis of an isolated estimate of one category of O&M expenses is simply unfair and unreasonable. Other factors that are directly connected with only the shutdown of Gannon Units 1 – 4 include such items as:

1. the increased investment in generating plant of almost $740 million;
2. the increase in depreciation expense related to Gannon Units 1 – 4;
3. the depreciation on Bayside Unit 1; and
4. increased maintenance expenses at Big Bend Station.

Failure to Consider all Relevant Costs Produced an Asymmetrical Result

15. The Commission also did not consider the lack of symmetry of its decision. This Commission on numerous occasions has recognized the principle that symmetry of its decisions is essential. This principle is that fairness requires that both ratepayers and utilities be treated in a similar manner. Applied here, this principle requires the Commission to consider all of the various costs and investments directly related to the shutdown of Gannon Units 1 – 4, not just one isolated component of one category of expense related to compliance with the CFJ and CD.

The Commission has applied the principle of symmetry on many occasions. For example, In Re Tampa Electric, Order No. PSC-94-0337-FOF-EI, issued March 25, 1994 in Docket No. 930987-EI affirmed its earlier Order No. 1840 saying:

> By Order Number 1840, we expressly rejected Public Counsel's approach to merely presume a downwardly adjusted return on equity and adjust rates accordingly. The rationale that such an approach ignored other known changes in the Company's

> operation, which would have an impact on earnings was explicitly expressed.
>
> To include a consideration of a rate reduction in this process is inconsistent with symmetry in the rate setting process. Clearly, if returns on equity were increasing, Public Counsel would expect, and we believe due process would require, a full exploration of all changes to the Company's operation in arriving at the fair, just and reasonable rates to be enacted. Such a comprehensive review is beyond the scope of this limited proceeding. (Emphasis supplied.)

Similarly, the Commission's limited consideration of O&M expenses of Gannon Units 1 – 4 in this proceeding is beyond the scope of this limited proceeding, and produced an asymmetrical result.

16. The Courts have reversed this Commission where it has refused to consider the symmetry of its decision. In 1994, the Florida Supreme Court in GTE Florida Incorporated v. Deason, 642 So.2d 545 (Fla. 1994) reversed this Commission for its denial of recovery of a portion of certain prudently incurred costs. On remand the Commission entered an order allowing recovery of all prudently incurred costs.

The Florida Supreme Court in 1996, in GTE Florida, Inc. v. Clark et al., 668 So.2d 971 (Fla. 1996), reversed the Commission for reaching an asymmetrical result and squarely held that:

> We view utility ratemaking as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar manner.[1]

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[1] The Court in GTE v. Clark, also observed:

> It would be inequitable to defer the utility's right to increased rates for approximately two years because we found a defect in the order entered by the Commission.
>
> The soundness of what we do here is demonstrated by the fact that if the instant case had involved an order decreasing rates it would be equally inequitable to allow the utility to continue to collect the old and great rates for the period between the entry of the first and second orders.

* * * * *

> . . . equity applies both to utilities and ratepayers when an erroneous order is entered. It would be clearly inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall, from an erroneous PSC order.
>
> * * * * *
>
> Additional support for our position is found by examining the method by which the PSC addresses the reciprocal situation.[2]

17. In other instances where the Commission was presented a proposal to increase the fuel charge for O&M costs associated with fuel savings, the resolution of the issue required a base rate solution. For example, in 2002 Florida Power & Light ("FPL") proposed recovery of its reactor vessel O&M costs through the fuel cost recovery clause. Staff, OPC and FIPUG initially objected to this treatment but subsequently entered into a settlement allowing recovery in base rates the actual total cost of inspection and repair at FPL's five nuclear units. This recovery was allowed through a five-year amortization of these costs with no change in FPL's base rates. See Order No. PSC-02-1761-FOF-EI issued December 13, 2002.

18. The Commission's failure to consider increases in other costs related to the same transaction clearly violates the principles set out in GTE v. Clark, supra and followed in Southern States v. F.P.S.C., supra.

Failure to Consider Unintended Consequences

19. The end result of this decision, if it is not reconsidered, will set in motion a series of unintended adverse consequences not only for Tampa Electric and its customers but for all investor-owned utilities and the ratepayers in this state.

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[2] See also, Village of North Palm Beach v. Mason, 188 So.2d 778 (Fla. 1966) and Southern States Utilities, Inc. v. F.P.S.C., 704 So.2d 555 (Fla. 1st DCA, 1997).

20. In the future, based on this order and under the principles of GTE v. Clark, the Commission would be required to allow a surcharge to the fuel adjustment factor for increases in costs prudently incurred by the utility when it takes actions which increase O&M expenses or investment which then reduce the Company's fuel and purchased power costs.[3] This could include scheduled maintenance related costs that improve the reliability and availability of a generating plant which yielded lower costing purchased power. In short, Order No. 03-1461 opens wide a whole series of consequences the Commission may not have intended and will not be able to legally avoid given its decision in this order.

21. Further, disallowance of $8.4 million of Tampa Electric's prudently incurred fuel and purchased power costs operates as a significant and unintended penalty. Accordingly, this action does exactly the opposite of what the Commission intended in its ruling on this issue. An $8.4 million penalty for a prudent action is identical to a regulatory incentive to behave imprudently. The Commission's ruling here will have a chilling effect on a utility's pursuit of O&M savings under circumstances where it runs the risk that such savings will be isolated and used to offset the recovery of prudently incurred fuel and purchased power costs.

22. The Commission has also injected considerable uncertainty in the Company's full recovery of prudently incurred costs required in order to comply with the CFJ and CD. Through this order, the Commission has sent the message that even when a Company is completely prudent in making an operating decision to comply with a federal and state environmental agreement, it may have related costs that selectively could be used to reduce recovery of prudently incurred fuel and purchased power costs. This perverse incentive creates significant

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[3] The Commission would not be able to avoid this result by attempting to cite the decision in this case as based on unique facts and circumstances. See Southern States v. FPSC, supra.

regulatory uncertainty which Tampa Electric believes this Commission failed to consider in making its decision to disallow $8.4 million of prudently incurred fuel and purchased power costs in this proceeding. This Commission has consistently indicated it does not want to create regulatory uncertainty.

23. Straying from the traditional consideration of fuel and purchased power costs in the fuel and purchased power clause calculation is fraught with complications and unintended consequences. The Commission should reconsider its disallowance of costs that were admittedly prudently incurred.

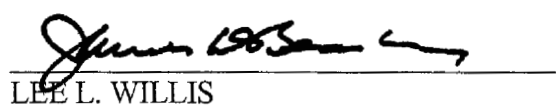
Summary

In summary, once the Commission found Tampa Electric's fuel and purchased power costs were prudently incurred, it was required by law to allow for the full recovery of these costs. This Commission erred further in straying from the consideration of fuel and purchased power costs in the fuel and purchased power cost recovery docket. The Commission then compounded that error by failing to consider all of the relevant non-fuel costs and investments. By so doing, the Commission violated the principle of symmetry it must by law follow as a matter of fairness. By selectively concentrating on one aspect of one cost that, in theory, will be reduced while refusing to consider all relevant costs and investments effectively treats ratepayers and the utility in a different manner. In GTE v. Clark, the Court held: ". . . equity requires both ratepayers and utilities to be treated in a similar manner." This same principle of equity will require the Commission in the future to allow a surcharge to the fuel charge for certain increases in O&M costs. Finally, the Commission imposed a penalty by effectively denying the recovery of costs it found in the same order to be prudently incurred.

WHEREFORE, Tampa Electric respectfully urges that the Commission reconsider that portion of Order No. 03-1461 which disallows $8.4 million of Tampa Electric Company's prudently incurred fuel and purchased power costs.

DATED this 6th day of January, 2004.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration has been furnished by U. S. Mail or hand delivery (*) on this 6th day of January 2004 to the following:

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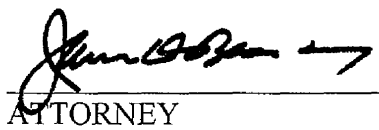

ATTORNEY