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January 6, 2004

VIA HAND DELIVERY

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Re: Docket No.: 040001-EI

Dear Ms. Bayo:

On behalf of the Citizens of the State of Florida, the Florida Industrial Power Users Group and the Florida Retail Federation, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ The Citizens of the State of Florida's, the Florida Industrial Power Users Group's and the Florida Retail Federation's Joint Motion for Reconsideration of Order No. PSC-03-1461-FOF-EI.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

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Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A.

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 040001-EI
Filed: January 6, 2004

**The Citizens of the State of Florida's,
The Florida Industrial Power Users Group's and the Florida Retail Federation's
Joint Motion for Reconsideration of Order No. PSC-03-1461-FOF-EI**

The Citizens of the State of Florida (OPC), the Florida Industrial Power Users Group (FIPUG), and the Florida Retail Federation (FRF) (hereinafter Movants), pursuant to rules 25-22.060 and 28-106.204, Florida Administrative Code, file this Motion for Reconsideration of that portion of Order No. PSC-03-1461-FOF-EI (Final Order) related to the amount of savings attributable to the accelerated shut down of the Gannon units which should be offset against increased fuel expense. Movants respectfully suggest that the Final Order misinterpreted the Commission's decision with respect to issue 17L. This resulted in a mistake in the calculation of the amount to be flowed through to ratepayers to offset the increased fuel amounts due to the accelerated Gannon shut down because the Final Order fails to include savings for 2004. As grounds therefore, the Movants state:

I.

Standard for Motion for Reconsideration

The standard 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); *Pingree v. Quaintance*, 394 So.2d 162 (Fla. 1st DCA 1981). In this instance, the Final Order mistakenly calculated O&M savings which should accrue

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to ratepayers as a result of the accelerated Gannon shut down because it included savings **only for 2003**. This mistake must be corrected to implement the Commission's decision.

II.

Background

The evidence in this case shows that in 1999, the United States Justice Department sued Tampa Electric Company (TECo) in Federal District Court on behalf of the Environmental Protection Agency (EPA) and sought fines and penalties for TECo's unauthorized modifications to certain of its power stations. Subsequently, TECo and the Florida Department of Environmental Protection (DEP) jointly filed pleadings in the 13th Judicial Circuit of Hillsborough County, Florida requesting that the state court approve a settlement agreement under which TECo would pay no fines, but would convert the Gannon Power Station from a coal burning operation to one that burns natural gas on or before December 31, 2004. The state court approved a Consent Decree between DEP and TECo. Subsequently, the federal court approved a similar settlement between TECo and the EPA. As a result of these settlements, TECo avoided fines and penalties. By the election to shut the Gannon plants down early, TECo improved its cash flow. Thus, the settlements and early shut down were a win-win proposition for TECo.

Customers, on the other hand, face higher environmental, capacity and fuel surcharges due to the settlement agreements' requirement of an earlier than planned shut down of TECo's coal units. TECo further accelerated the units' shut down schedule and shut them down on the following dates:

Gannon Unit 1 -- April 7, 2003;
Gannon Unit 2 -- April 9, 2003;
Gannon Unit 3 -- October 24, 2003;
Gannon Unit 4 -- October 12, 2003.¹

¹ Tr. 367.

This earlier shut down resulted in a reduction in TECo operating and maintenance (O&M) costs and a substantial increase in fuel costs in 2003 and an even greater increase in 2004. The early shut down created a conundrum for consumers because they pay all the fuel costs increases plus interest, while TECo retains all the O&M cost savings. Consumer groups requested that the Commission compel TECo to share the O&M savings.

III.

Summary of Argument

After due consideration of the evidence presented, the Commission determined that the early shut down was prudent, but that under the circumstances for 2003 and 2004 it would be fair and reasonable to partially offset the fuel cost increase imposed upon customers by a portion of the amount of O&M costs TECo saves from the early shut down. The Commission found MJM-5 to be the best indicator of TECo's O&M savings for the year 2003. TECo witness Jordan agreed that it was a fair representation of cost savings. The Commission directed its Staff to use MJM-5 to calculate the O&M savings and held that the savings should be shared on an 80/20 basis with ratepayers.

While the Commission, during its discussion, clearly stated its intent to link O&M savings to additional fuel increases through December 31, 2004, the Final Order erred when it used MJM-5 to represent those savings without accounting for the fact that the \$10.5 million "Net Savings" shown in MJM-5 *only* recognizes O&M savings for 2003. The Commission appropriately used MJM-5 as the *formula* for calculating O&M savings that should be offset against increased fuel charges, but failed to account for the 2004 savings. When the "Net Savings" for 2003 and 2004 are calculated, the total amount to be flowed through the fuel clause (after the 80/20 split) is \$31.9 million.

IV.

Order No. PSC-03-1461 FOF-EI Is In Error Because It Fails to Offset 2004 O&M Savings Against Increased Fuel Expense

A. The Commission Intended to Match Increased Fuel Costs with O&M Savings

The Commission's decision makes it clear that ratepayers are to share in the savings from the accelerated shut down of Gannon Units 1-4 so as to match increased fuel costs with O&M savings. As Commissioner Davidson explained, TECo sought to recover for fuel expenses that would not have been incurred "but for" the accelerated shut down of Gannon Units 1-4. Similarly, there were O&M savings that would not have occurred "but for" the early shut down. Commissioner Davidson explained:

What I'm trying to get at is some pairing up of the costs and the savings resulting from the shutdown and somehow trying to marry those up so that we're not just passing on costs or just passing on savings, but there's some pairing up of those two elements.²

Chairman Jaber also wanted to link fuel charges to O&M savings:

Chairman Jaber: The question I think we have in front of us is the units were shut down. We know that that resulted in increased replacement fuel costs. We know that's resulted in some savings on O&M. Philosophically speaking, costs are shared, savings should be shared.³

B. The Commission Used MJM-5 As the *Formula* for Achieving This Matching

That the Commission intended to use MJM-5 (Scenario 5) as the *formula* for the "Net Savings" calculation is clear from this discussion:

Commissioner Davidson: . . .Chairman, is it Scenario 5 of that confidential exhibit [MJM-5] that would be *the formula*?⁴

Chairman Jaber: Scenario 5 is what I had in mind. That was the one Ms. Jordan

² Tr. 1203.

³ Tr. 1205-1206. It should be noted that, although the Commission split O&M savings on an 80/20 basis, the ratepayers continue to pay 100% of the associated fuel costs.

⁴ Tr. 1217, emphasis added.

testified was closest to what actually happened with the shutdown of the four units. Is that your recollection?

Mr. Haff: That's correct. Yes.

Chairman Jaber: Commissioner Deason, do you agree with that? It was Scenario 5.

Commissioner Deason: That was the testimony, yes.

C. The Commission Intended to Use MJM-5 to Capture "Net Savings" Through December 2004

It is further clear that the Commission wanted to use MJM-5 to tie fuel costs to O&M savings for the time period *through December 31, 2004*, the required shut down date for the Gannon units. The following discussion among the Commissioners, as they worked through language for a motion, illustrates this:

Commissioner Davidson: And the motion if and when made, would read . . . utilizing Scenario 5 of Confidential Exhibit MJM-5, the Commission offset TECO's requested fuel cost increase by the O&M savings that resulted from its decision to cease operations at Gannon Units 1 through 4 *prior to December 31, 2004*, . . . which savings would not have resulted but for such decision to cease operations.⁵

...

Chairman Jaber: Let me let Commissioner Davidson work on that language and maybe show it to you all as well, staff. You think through how that language could be applied. I think you understand what we are trying to achieve.⁶

After a break, Commissioner Davidson read his proposed motion, which was in four parts. *Each part* of the motion included the *December 2004* date, including the final clause of the motion: ". . . that utilizing Scenario 5 of Confidential Exhibit MJM-5, the Commission offset TECO's requested fuel cost increase by the O&M savings that resulted from its decision to cease operations at its Gannon Units 1 through 4 prior to *December 31, 2004*."⁷ Commissioner

⁵ Tr. 1219, emphasis added.

⁶ Tr. 1222.

⁷ Tr. 1223, emphasis added.

Bradley immediately seconded the motion.⁸ Commissioner Deason introduced the concept of shared savings and said: "I understand the basis for the motion. There are, as a result of the decision to close the plants earlier than required by the settlement, that O&M savings did accrue."⁹

Commissioner Deason later noted that TECO's O&M savings offset would involve *both* 2003 and 2004 O&M savings: "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."¹⁰ After discussion regarding waiver of confidentiality as to MJM-5, Chairman Jaber said:

With regard to the proposed language that might turn into a motion from Commissioner Davidson, now that we know *what the O&M savings* is in the exhibit, we can easily put that number into Commissioner Davidson's proposal, right?

Mr. Keating: Yes.¹¹

The discussion among the Commissioners evidences their intent to tie the O&M savings to the increased fuel expenses *through December 31, 2004*. At *no* point in their discussion did any Commissioner indicate an intent to limit savings to *only* 2003. However, the Final Order references only savings for 2003 and thus does not implement the Commission's decision, as illustrated by its thorough discussion above. To implement the Commission's decision, the savings for *both* 2003 and 2004 must be calculated.

⁸ Tr. 1224.

⁹ Tr. 1226.

¹⁰ Tr. 1252.

¹¹ Tr. 1258, emphasis added.

D. MJM-5 Shows Net Savings for Only 2003

The Final Order erroneously used the "Net Savings" number listed in Scenario 5 from MJM-5 to represent the total savings attributable to the early shut down and failed to take into account savings for 2004 attributable to the early shut down. A comparison of MJM-5 (Scenario 5) with MJM-8 (Scenario 5)¹² confirms that MJM-5 depicts savings *only* for 2003. Both MJM-5 and the MJM-8 2003 figures show base Gannon O&M costs of \$38.4 million for operating Gannon Units 1-4 for an entire year. MJM-5 and the MJM-8 2003 figures also show reduced O&M/NRF costs of \$27.5 million for operating Gannon Units 1-4 for a partial year. The \$10.5 million figure the Commission used in the 80/20 customer offset calculations is the **2003** TECo operating income "Net Savings" number that can be directly calculated from either MJM-5 or 2003 MJM-8 data (since this data is identical). Using the **2003** figures in millions as clearly labeled in MJM-8 (Scenario 5), the **2003** "Net Savings" is calculated as follows:

**2003 Operating Impacts
(from MJM-8, \$ in Millions)**

\$ 38.4	Base Gannon O&M (Full Yr)
-27.5	O&M/NRF Expense (Partial Yr)
-0.5	Bayside Incremental
+0.1	Bayside CSA Savings (from MJM-5)
+10.5	Net Savings

The calculation clearly demonstrates that the \$10.5 million¹³ "Net Savings" figure from MJM-5 used in calculating ratepayer offsets captures **only** 2003 savings and does not take into account savings for the entire year of 2004 when Gannon 1-4 will not operate. Because the \$10.5 million savings shown on MJM-5 is attributable **only** to 2003, the Final Order should be

¹² MJM-5 and 8 are attached hereto as Attachment A. At hearing, TECo noted that Scenario 5 of MJM-5 was not confidential. Though MJM-8 is labeled confidential, it appears on the Commission's website, so Movants assume it is no longer considered confidential. Finally, although these two documents are attached to the testimony of OPC witness Majoros, they are TECo documents.

¹³ The Commission then attributed 80%, or \$8.4 million, of the \$10.5 million net savings to ratepayers.

revised to include the savings for 2004 to implement the Commission's decision. The Commission must also credit the savings to ratepayers for 2004, using the same methodology shown above.

Further evidence of the Commission's finding is contained in the Final Order at page 21. In that passage, the Commission directs that gains and losses on the sale of surplus coal as a result of the early shut down be flowed through the fuel clause and does not limit the calculation to the year 2003.

E. Calculation of Net Savings in 2004

Reference to MJM-8 makes it clear that TECo will realize 2004 O&M savings that would not occur but for the decision to shut down Gannon Units 1-4 in 2003. MJM-8 shows a Gannon base O&M number of \$25.6 million for 2004. MJM-8 indicates that the \$25.6 million amount listed for 2004 represents retirement of Gannon Units 1-4 in September 2004. As the testimony in this matter established, the units were taken out of service in 2003 and thus will not operate at all in 2004.¹⁴ To reflect the required December 31, 2004 shut down date, a full base year of O&M (\$38.4 million) must be taken into account in calculating the savings for 2004.¹⁵

To calculate the net savings for 2004, the Commission should use the \$38.4 million Gannon base number (which represents a full year of avoided O&M expenses and is appropriate since the required shut down date is December 31, 2004, yet the Gannon units will not operate at all in 2004) and subtract the \$9 million shown on MJM-8, which TECo delineates as the costs attributable to Gannon Units 1-4 when they are not operating.¹⁶ Using the same formula the

¹⁴ Tr. 367.

¹⁵ A comparison of the 2003 \$38.4 million number with the 2004 \$25.6 million number shows that for 2004, TECo simply removed 1/3 of the year's costs since MJM-8 assumes Gannon Units 1-4 were retired in September 2004.

¹⁶ TECo itemizes those costs as: inventory write-off (\$3.3 million), HP (\$0.3 million), lay-up, safety demon (\$1.5 million), facility clean up (\$.4 million), labor/fringe (\$1.3 million) and contingency (\$2.2 million) for a total of \$9 million.

Commission used for 2003 for the 2004 calculation yields the following:

**2004 Operating Impacts
(from MJM-8, \$ in Millions)**

\$ 38.4	Base Gannon O&M (Full Yr)
-9.0	O&M/NRF Expense (Shut Down Yr)
0	Bayside Incremental
0	Bayside CSA Savings
+29.4	Net Savings

When 80% of the 2004 amount of \$29 million is calculated (based on the Commission's decision to credit 80% to ratepayers and 20% to TECo), it yields a net savings of \$23.5 million for **2004**. This is the amount that should be credited to the fuel clause for the impact of the Gannon shut down in 2004. Adding the \$23.5 million for 2004 to the \$8.4 million for 2003 yields total net savings for both years of \$31.9 million that should be flowed through the fuel clause. This calculation is shown below:

<u>Total Credit to Fuel Clause</u>	
2003:	\$ 8.4
2004:	<u>\$23.5</u>
Total fuel clause credit	
For 2003 and 2004	\$31.9 million

The Final Order reduces the fuel cost increase by 45¢ for each 1000 kwh sold to retail customers. On reconsideration, the corrected order should reduce the average 2004 fuel surcharge to customers by an additional \$1.25 for each 1000 kwh consumed, for a total reduction of \$1.70 for each 1000 kwh consumed.¹⁷

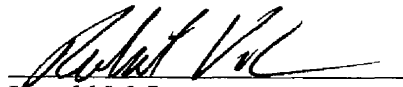
¹⁷ \$31,900,000/ 18,768,886 Mwh (See, Schedule E-1 to Ms. Jordan's September 2003 projection testimony).

V.

Conclusion

Order No. PSC-03-1461 FOF-EI contains an error because it fails to include savings for 2004 attributable to the accelerated shut down of the Gannon units in its calculation of amounts to be flowed through the fuel clause. This error should be corrected on reconsideration.

WHEREFORE, the Commission should reconsider that portion of its Final Order in which it determined the offset to the increase in fuel charges due to TECo's accelerated shut down of Gannon Units 1-4. The total amount which should be credited to ratepayers for 2003 and 2004, based on the Commission's methodology, is \$31.9 million.



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Gannon Early Shutdown

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Scenario 1 Scenario 2 Scenario 3 Scenario 4 Scenario 5

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Clause Impacts					
Fuel & Purchased Power					\$17,605
Coal Contracts					6,555
Dead Freight					7,670
Total Clause Impact					<u>31,830</u>
Average customer bill impact					\$1.8
Operating Income Impacts					
Gannon Base					38,400
O&M and NRF Expenses					27,500
Bayside Costs					500
Bayside CSA Savings *					-121
Net Savings					<u>10,521</u>

* Polk CSA costs not included

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Attachment A to Motion for
Reconsideration
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Gannon O / NRF
Scenario Analysis

CONFIDENTIAL

EXHIBIT MJM-8
Page 1 of 1

2003 (millions)	Gannon O&M / NRF	Bayside Incremental	Total	Plan Savings	
Scenario 1	\$ 23.0	\$ 0.9	\$ 23.9	\$ (14.5)	GN 1-4 May 1, 2003
Scenario 2	21.0	1.1	22.1	(16.3)	GN 1-4 March 16, 2003
Scenario 3	28.5	0.5	29.0	(9.4)	GN 1-2 May 1, 2003 and GN 3-4 Sept 1
Scenario 4	22.0	1.0	23.0	(15.4)	GN 1-2 March 16, 2003 and GN 3-4 May 1, 2003
Scenario 5	27.5	0.5	28.0	(10.4)	GN 1-2 March 16, 2003 and GN 3-4 Sept 1, 2003
2004					
All Scenarios	\$ 9.0				No Gannon Units Operating (Includes Inventory Write-Off \$3.3m, HP \$0.3, Lay-up, Safety Demo \$1.5, Facility Clean-up \$.4) Labor / Fringe \$1.3, Contingency \$2.2)
Base Gannon	\$ 2003 38.4	\$ 2004 25.6			GN 1-4 Retired Sept 2004

Attachment A to Motion for
Reconsideration
Docket 040001-EI
Page 2 of 2

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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 (*) hand delivery or U.S. Mail this 6th day of January, 2004, to the following:

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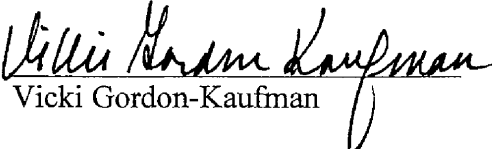
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