

Matilda Sanders

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Friday, January 06, 2006 3:05 PM
To: Filings@psc.state.fl.us
Cc: Adrienne Vining; Agneta Llewellyn, Administrator, Regulatory Coordination, TECO; Bill Walker; Cheryl Martin/Florida Public Utilities Company; Gary V. Perko; Jeffrey A. Stone; Jennifer Rodan; John McWhirter; John T. Butler; Jon C. Moyle, Jr.; Lee Willis; Mark Hoffman; Mike Twomey; Patty Christensen; R. Alexander Glenn; Schef Wright; Susan D. Ritenour; Thomas K. Churbuck; Tim Perry; Wade Litchfield
Subject: e-filing
Attachments: 050001.Motion for Clarification-Reconsideration (GPIF) clerk's office version.doc

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Electronic Filing

a. Person responsible for this electronic filing:

Patricia A. Christensen, Associate Public Counsel
 Office of Public Counsel
 c/o The Florida Legislature
 111 West Madison Street, Room 812
 Tallahassee, FL 32399-1400
 (850) 488-9330
 christensen.patty@leg.state.fl.us

b. Docket No. 050001-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 8 pages.

e. The document attached for electronic filing is the Citizens' Motion for Clarification and/or Reconsideration.

(See attached file: 050001.Motion for Clarification-Reconsideration (GPIF) clerk's office version.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
 Secretary to Patricia A. Christensen, Associate Public Counsel.
 Office of Public Counsel
 Telephone: (850) 488-9330
 Fax: (850) 488-4491

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050001-EI

Filed: January 6, 2006

Citizens' Motion for Clarification and/or Reconsideration

The Citizens of the State of Florida, through the Office of the Public Counsel, pursuant to Rules 25-22.060 and 25-106.104, Florida Administrative Code, hereby file their Motion for Clarification and/or Reconsideration. In support of their Motion, Citizens state that:

1. On December 23, 2005, the Commission issued Order No. PSC-05-1252-FOF-EI, its Final Order in the 2005 fuel proceeding. As part of this Order, the Commission approved the Generating Performance Incentive Factor (GPIF) for the companies including Tampa Electric Company (TECO). At the hearing, the GPIF for TECO was contested by the Citizens and Commission staff provided testimony on the issue of the appropriate GPIF for TECO.

2. In this Motion, Citizens address following statements in Order No. PSC-05-1252-FOF-EI:

After considering the testimony of both Mr. Matlock and Mr. Smotherman, we are uncomfortable with deviating from the consistent way in which the GPIF manual has been applied by TECO. As a result, we believe that it should be applied in the same way here. **At the same time, we think that some significant relevant points have been raised, and we would suggest that before we actually open up the entire GPIF manual for review, TECO and our staff should meet and see if they can come to an agreement on modifications to the manual.** If a new methodology can be agreed upon and we approve it, then everyone will

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know what the rules are on a going-forward basis. We are hesitant in this instance to change the rules midstream here when penalties and rewards are at stake. We would rather have the procedures better defined on a going-forward basis so that all parties will know what those procedures are.

Order No. PSC-05-1252-FOF-EI at pp. 26-27 (Emphasis added.) Taken literally, the emphasized language appears to limit any discussion of revisions to the GPIF manual to TECO and Commission staff only excluding Citizens. It also appears from this language that a meeting between TECO and staff is a precondition prior to any consideration of the establishment of any docket addressing GPIF. Since a narrow reading of the language of the Order could lead to these conclusions, Citizens ask the Commission to clarify that (1) Citizens (and other interested parties) are to be included in any discussion of potential modification to the GPIF manual; and (2) the Commission did not intend to indicate that such informal discussions are a condition precedent to the right and ability of any party including Citizens, to propose, through appropriate pleadings and evidence, modifications to the GPIF mechanism for the Commission's consideration. Alternatively, if the Commission intended these results, the Citizens move for reconsideration of these aspects of the Order on the grounds they would impair Citizens' procedural rights as a matter of law.

3. First, Citizens submit that such clarification is needed to conform the Order to the Commission's comments made in rendering its bench decision. The issue being discussed was – not an overall assessment of the GPIF mechanism – but an issue that was specific to TECO's submission. The language included in the Order was based on the comments made by Commissioner Deason prior to making his motion. The part of Commissioner Deason's comments on which the problematic language is based is

“However, I think there have been some significant, relevant issues raised, and I would suggest before we actually open up the entire review of the manual that staff and TECO be encouraged to sit down and see if they could come to an accommodation.” But, the Order did not include the next comment: “If a three-year average is the right way to go and that can be transitioned into, fine, and then we know what the rules are going forward.” Hearing Transcript at p. 1150. Based on these comments taken together, it appears the parties were being encouraged to meet to see if the issues raised at the hearing particularly related to calculating the GPIF for TECO could be resolved before the next year’s hearing.

This is further supported by the additional comments made by Commissioner Deason and Chairman Baez after the motion and vote to approve TECO’s GPIF. Commissioner Deason stated that “if TECO doesn’t take advantage of the opportunity to sit down and discuss their legitimate concerns and this item comes up again next year, I may not be so inclined.” Hearing Transcript at p. 1151. And Chairman Baez’ statement that “If the point of symmetry is that over the long haul you zero out, then why on earth are we doing this? Okay? We’re just spending a lot of money for nothing. That’s the way I see it. But nonetheless, I think I see a fair amount of interest in discussing this further.” Id. Although taking all the comments at the hearing deliberations in context it appears that the Citizens should be included in any further discussion, the language of the Order itself is not clear on this point.

Thus, Citizens request that the Commission clarify that the language “TECO and our staff should meet and see if they can come to an agreement on modifications to the manual” is not meant to exclude or preclude Citizens (or any party) from participating in

discussions regarding revisions to the GPIF manual. Further, Citizens seek further clarification that we should be included in any such discussion since we were the party who raised the objection to TECO's proposed GPIF calculation at the hearing.

4. Citizens also request that the Commission clarify that the language "At the same time, we think that some significant relevant points have been raised, **and we would suggest that before we actually open up the entire GPIF manual review,** TECO and our staff should meet and see if they can come to an agreement on modifications to the manual. . . ." does not create a prerequisite to any consideration of a petition to consider forward-looking modifications to the GPIF. (Emphasis added) As quoted above, the comment was made at the hearing deliberations suggesting that the parties meet regarding the right way to calculate TECO's GPIF prior to next year's hearing. Since this suggestion related to the resolution of only those issues identify at the hearing related to TECO and not any other issues which might arise related to GPIF, Citizens seek clarification that a meeting between TECO and staff is not required as a precondition to a proposal for a more general exploration of GPIF or a bar to any petitions related to GPIF.

5. Citizens are confident the Commission did not intend to foreclose such initiatives. In an abundance of caution: If such was the intent, Citizens ask the Commission reconsider its decision. If the sentence "At the same time, we think that some significant relevant points have been raised, and we would suggest that before we actually open up the entire GPIF manual review, TECO and our staff should meet and see if they can come to an agreement on modifications to the manual. . . ." has the effect of

precluding Citizens from participating in the meeting(s) between TECO and staff or creates a precondition prior to any consideration of the establishment of a docket addressing GPIF, then the Order fails to consider the due process rights of the Citizens to participate in this proceeding.

First, Citizens are a party in the fuel proceeding. Citizens objected to approval of TECO's GPIF and raised the issue in this docket. Thus, to the extent that any discussions are to be held regarding the appropriate methodology to be applied to calculate TECO's GPIF in the future, Citizens have the right to participate. Citizens request that the Commission reconsider its decision if it is determined that the current language of the Order precludes Citizens participation in any discussion regarding TECO's GPIF.

Second, Citizens believe the language of the Order should be reconsidered if it is determined to require a meeting between TECO and staff as a precondition to the establishment of any future dockets to address the GPIF manual. As noted above, the language is limited to concerns regarding the issues raised at hearing about TECO. As written, the language in the Order infringes on the Citizens due process rights to bring any other GPIF issues to the Commissions attention through a Petition or other mechanism.

Wherefore, Citizens requests that the Commission grant their Motion for Clarification and/or Reconsideration. We ask that the Commission clarify and/or reconsider the language of the Order so that it is clear that any meetings on the GPIF

between TECO and staff should include Citizens and that the language of the Order does not preclude consideration of proposals to modify the GPIF.

Harold McLean
Public Counsel

s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by electronic mail and U.S. Mail on this 6th day of January, 2006, to the following:

James Beasley
Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Bill Walker
Florida Power & Light Company
215 S. Monroe Street, Suite 818
Tallahassee, FL 32301-1859

James A. McGee
Progress Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, FL 33733-4042

Tim Perry
McWhirter Reeves Law Firm
117 S. Gadsden Street
Tallahassee, FL 32301

John T. Buter, P.A.
Steel Law Firm
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2398

Jennifer Rodan
Adrienne Vining
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

John McWhirter, Jr.
McWhirter Reeves Law Firm
400 North Tampa Street, Suite 2450
Tampa, FL 33602

R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Norman H. Horton, Jr.
Floyd R. Self
Messer Law Firm
Post Office Box 1876
Tallahassee, FL 32302-1876

Susan D. Ritenour
Richard McMillan
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Angela Llewellyn
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602-0111

Moyle Law Firm
Jon C. Moyle
118 N. Gadsden Street
Tallahassee, FL 32301

Thomas K. Churbuck
911 Tamarind Way
Boca Raton, FL 33486

Hopping Law Firm
Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314

Black & Veatch
Myron Rollins
11401 Lamar Avenue
Overland Park, KS 66211

Florida Public Utilities Company
Cheryl Martin
P.O. Box 3395
West Palm Beach, FL 33402-3395

Landers Law Firm
Robert Scheffel Wright
John T. LaVia, III
P.O. Box 271
Tallahassee, FL 32302

Beggs & Lane Law Firm
Jeffrey A. Stone
Russell Badders
P.O. Box 12950
Pensacola, FL 32591

CSX Transportation, Inc.
Mark Hoffman
500 Water Street, 14th Floor
Jacksonville, FL 32202

Michael B. Twomey
Post Office Box 5256
Tallahassee, FL 32314-55256

s/ Patricia A. Christensen

Patricia A. Christensen
Associate Public Counsel