

BEFORE THE PUBLIC SERVICE COMMISSION

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

DOCKET NO. 060001-EI  
ORDER NO. PSC-06-0126-FOF-EI  
ISSUED: February 16, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA

ORDER GRANTING MOTION FOR CLARIFICATION OF FINAL ORDER

BY THE COMMISSION:

By Order No. PSC-05-1252-FOF-EI, issued December 23, 2005, in Docket No. 050001-EI ("Fuel Order"), this Commission established fuel and capacity cost recovery factors for investor-owned electric utilities to apply for billing purposes in calendar year 2006. On January 6, 2006, the Office of Public Counsel ("OPC") filed a motion for clarification or, in the alternative, reconsideration of that portion of the Fuel Order which addressed a future meeting regarding the Generating Performance Incentive Factor ("GPIF") for Tampa Electric Company ("TECO"). At the same time, OPC filed a request for oral argument. TECO filed a response to OPC's motion and request for oral argument on January 9, 2006. At our February 7, 2006, Agenda Conference, we ruled that oral argument was not necessary and we granted OPC's motion for clarification as set forth below.

We have jurisdiction over this subject matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

By its motion, OPC asks us to clarify that the portion of our Fuel Order suggesting that TECO and staff meet and try to reach an agreement on modification to the GPIF manual does not exclude participation by OPC or any other party. OPC also asks us to clarify that a meeting between TECO and staff is not a condition precedent to the right and ability of any party to propose modifications to the GPIF mechanism for our consideration. OPC states that such clarification is needed to conform the Fuel Order to our comments made in rendering our bench decision. OPC asserts that it is confident that the Commission did not intend to foreclose such initiatives, but the Fuel Order does not explicitly state that other parties may participate in a meeting between TECO and staff. OPC also asserts that such a meeting is not a prerequisite to our consideration of any party's proposed modifications to the GPIF mechanism. If, by our Fuel Order, we intend to limit any discussion of GPIF manual revisions to TECO and staff and intend that such a meeting is a precondition to any consideration of the establishment of a docket addressing the GPIF mechanism, then OPC asks that we reconsider that decision.

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In its response to OPC's motion, TECO states that it does not object to the requested clarification, although it does not believe such clarification is necessary. TECO asserts that it never considered the language of our Fuel Order to mean that other parties would be excluded from any meeting between TECO and staff. TECO states that it construed that portion of our Fuel Order to mean that the subject of its GPIF should be addressed. TECO further asserts that it does not believe our order intended that a meeting between TECO, staff, and other parties would be a necessary prerequisite to actions by other parties.

In addressing this issue, we stated, at pages 26-27 of the Fuel Order, the following (emphasis added):

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 to 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 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.

We find that the clarification sought by OPC is appropriate. We did not intend to limit discussion of the GPIF manual solely to TECO and staff. Pursuant to Rule 25-22.033, Florida Administrative Code, all parties are provided notice and an opportunity to participate in meetings between staff and any particular party in a docketed adjudicatory proceeding like this docket. In addition, the Fuel Order's discussion of a meeting pertained to revising the calculation of TECO's GPIF prior to next year's fuel hearing. The discussion of GPIF revisions was specific to TECO and did not intend to preclude any party's proposal for a more general exploration and/or forward-looking modifications to the GPIF manual. Accordingly, we clarify that OPC and other parties to the docket are not excluded from any discussion between TECO and staff about potential modifications to the GPIF manual and that such a meeting is not a condition precedent to the right and ability of any party to propose modifications to the GPIF mechanism for our consideration.

In sum, we grant OPC's motion to clarify Order No. PSC-05-1252-FOF-EI.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Office of Public Counsel's motion for clarification of Order No. PSC-05-1252-FOF-EI is granted as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 16th day of February, 2006.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.