State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: April 24, 2025

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sparks, Marquez, Harper) AEH
Division of Engineering (P. Buys, Wooten, Ellis, Ramos) TB
Division of Accounting and Finance (D. Buys, Norris) ALM
Division of Economics (Draper) EJD

RE: Docket No. 20240026-EI – Petition for rate increase by Tampa Electric Company.

Docket No. 20230139-EI – Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company.

Docket No. 20230090-EI – Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

AGENDA: 05/06/25 – Regular Agenda – Motion for Reconsideration and Clarification; Oral Argument Requested; Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 2, 2024, Tampa Electric Company (TECO or Company) filed its Petition for Rate Increase (Petition), minimum filing requirements (MFRs), and testimony.[1] TECO provides service to approximately 844,000 customers in a 2,000 square mile service territory in Hillsborough and portions of Polk, Pasco, and Pinellas counties, Florida.

TECO initially requested an increase of approximately $296.6 million in base rates and charges effective January 1, 2025. In addition, the Company requested incremental rate increases of approximately $100 million, effective January 1, 2026, and $72 million, effective January 1, 2027. On August 22, 2024, the Company reduced its initial request for rates in 2025 to $287.9 million, with the incremental rate increases also reduced to $92.4 million and $65.5 million, for 2026 and 2027, respectively.[2] TECO requested a Return on Equity (ROE) of 11.50 percent. Notably, TECO's last base rate hearing was in 2021, where the Commission approved a unanimous settlement agreement (2021 Settlement Agreement).[3]

The Office of Public Counsel's (OPC) intervention in this matter was acknowledged by Order No. PSC-2024-0048-PCO-EI, issued February 26, 2024. On April 23, 2024, intervention was granted to Federal Executive Agencies; Sierra Club; Florida Rising, Inc. (FL Rising); League of United Latin American Citizens of Florida (LULAC); Florida Retail Federation (FRF); and Florida Industrial Power Users Group.[4] On June 3, 2024, intervention was granted to Americans for Affordable Clean Energy, Inc.; Circle K Stores, Inc.; RaceTrac Inc.; and Wawa, Inc.[5] Intervention was granted to Walmart, Inc. (Walmart) on August 8, 2024, by Order No. PSC-2024-0317-PCO-EI.

An administrative evidentiary hearing was held August 26–30, 2024. Order No. PSC-2025-0038-FOF-EI addressing the requested rate increases for 2025, 2026, and 2027 was issued on February 3, 2025 (Final Order). Some issues were entirely or substantially uncontested, or rested entirely on the outcome of other issues, with little to no argument presented by some or all intervening parties and the more limited analysis contained in the Final Order on these subjects reflects that. Other issues, such as the ROE, were vigorously debated by multiple expert witnesses representing a broad range of interests and the more extensive analysis of those issues in the Final Order reflects that.

On February 18, 2025, OPC filed its Citizen's Motion for Reconsideration and Motion for Clarification of Certain Provisions (Motion) pursuant to Rule 25-22.060, Florida Administrative Code (F.A.C.). In its Motion, OPC requested reconsideration regarding the Commission's findings on the Asset Optimization Mechanism (AOM) and the Storm Cost Recovery

[1] By Order No. PSC-2024-0096-PCO-EI, Docket Nos. 20240026-EI, 20230139-EI, and 20230090-EI were consolidated.
[2] Document No. 08609-2024.
[3] Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company.*
[4] Order Nos. PSC-2024-0121-PCO-EI, PSC-2024-0122-PCO-EI, PSC-2024-0123-PCO-EI, PSC-2024-0124-PCO-EI, and PSC-2024-0125-PCO-EI.
[5] Order No. PSC-2024-00182-PCO-EI.

Mechanism (SCRM) as well as the ROE midpoint finding of 10.50 percent. OPC also identified potential errors in the calculation used to determine the revenue requirement. Additionally, OPC also requested clarification as to the approved parameters of the SCRM. Simultaneously with its Motion, OPC filed a motion titled "Citizens' Request for Oral Argument on its Motion for Reconsideration and its Motion for Clarification of Certain Provisions" (Request for Oral Argument) requesting oral argument before the Commission pursuant to Rule 25-22.0022, F.A.C.

On February 25, 2025, TECO filed its Response in Opposition to the Office of Public Counsel's Motion for Reconsideration and Clarification of Final Order in response to OPC's Motion, arguing the Commission properly approved both the SCRM and the AOM and properly determined the appropriate ROE midpoint. In regard to the potential errors identified by OPC, TECO stated it could not determine with precision the validity of those claims, but proposed recovering or returning any differential in the amount of revenue requirement through one of the company's cost recovery clauses for 2025 and to account for the impact in subsequent years using the subsequent year adjustments scheduled to take place per the Commission's Final Order.

FL Rising and LULAC support the Motion. The remaining intervenors either do not oppose or take no position on the Motion. With regard to the Request for Oral Argument, FL Rising, LULAC, FRF, and Walmart each supports it. The remaining intervenors either do not oppose or take no position on the Request for Oral Argument.

This recommendation addresses OPC's Request for Oral Argument and OPC's Motion for Reconsideration, and TECO's responses thereto. The Commission has jurisdiction over this matter pursuant to Chapter 366, including Sections 366.06 and 366.076, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should OPC's Request for Oral Argument on its Motion for Reconsideration be granted?

Recommendation: No. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide OPC's Motion for Reconsideration. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends five minutes per side as sufficient. (Sparks, Marquez, Harper)

Staff Analysis:

Law

Rule 25-22.0022(1), F.A.C., allows a party to request oral argument before the Commission for any dispositive motion before the Commission by filing a separate written pleading filed concurrently with the motion on which argument is requested and stating with particularity why oral argument would aid the Commission. Granting or denying oral argument is within the sole discretion of the Commission under Rule 25-22.0022(3), F.A.C.

OPC's Position

OPC requested the opportunity to provide 10 minutes of oral argument on its Motion to further elaborate on the arguments made within as well as to aid the Commissioners in understanding and evaluating the issues raised and to answer any questions. OPC also states that certain of its arguments relate to matters that arose only after the record closed, after deliberations took place, and after the final order in this matter was issued.

TECO's Position

In its Response, TECO argues that OPC's Motion and TECO's own response are sufficiently detailed and clear such as to enable the Commission to make a decision without oral argument.

Staff's Analysis and Recommendation

Granting or denying oral argument is within the sole discretion of the Commission. Staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide OPC's Motion. However, if the Commission wants to exercise its discretion to hear oral argument, staff recommends five minutes per side as sufficient.

Issue 2: Should OPC's Motion for Reconsideration be granted?

Recommendation: Yes, in part. Staff recommends that OPC's Motion for Reconsideration should be denied regarding the AOM, SCRM, and ROE determinations; however, the Motion should be granted to correct the identified errors in the calculation of the revenue requirement. The resulting $1.1 million increase in revenue requirement should be recovered for 2025 through the Energy Conservation Cost Recovery Clause and then in 2026 going forward when implementing Subsequent Year Adjustment rates. (Sparks, Marquez, Harper, P. Buys, O. Wooten, Ellis, D. Buys, Norris, Draper)

Staff Analysis:

Law

The appropriate standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering the order under review.[6] It is not appropriate to reargue matters that have already been considered.[7] Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[8]

Overview of Contested Aspects of Final Order

In this case, TECO petitioned for two mechanisms to be approved—the SCRM and the AOM. The SCRM establishes a process by which TECO may seek approval for a monetary surcharge and timing framework through which it recovers storm costs incurred to restore power to customers after damage caused by tropical systems, including the replenishment of the preexisting target storm reserve balance. Any restoration costs TECO incurs in expeditiously repairing the energy grid and restoring power to customers is subject to later Commission review under a prudency standard. In this way, customers are protected from TECO misusing the fund while at the same time ensuring TECO has the wherewithal to remedy the damage inflicted by tropical systems.

The AOM is a shareholder incentive program designed to encourage TECO to engage in additional activities with ratepayer-supported assets in order to generate additional net benefits that produce customer savings in the form of reductions to fuel costs. TECO shareholders benefit as the customer savings increase, encouraging the Company to maximize the benefits it can extract from its existing assets. AOM activities can include efforts such as the release of contracted gas storage space during non-critical demand seasons, the sale of fuel using existing transportation capacity to non-TECO customers in Florida, and the sale of gas in the gas-production areas.

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[6] *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).
[7] *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)).
[8] *Stewart Bonded Warehouse, Inc.,* 294 So. 2d at 317.

While the two mechanisms were initially *described* by reference to a prior settlement agreement, TECO did not rest on a precedential value argument when asking that a new SCRM and new AOM be authorized to commence on January 1, 2025. To the contrary, TECO supported its requests for the two mechanisms with sufficient evidence and testimony regarding the benefits to customers and the functioning of the mechanisms. TECO even requested that the Commission approve the Company's sale of renewable energy credits (RECs) and the release of natural gas pipeline capacity as qualifying asset optimization activities, despite not being included in the 2021 Settlement Agreement. The Commission similarly gave no precedential value to the old mechanisms when rendering its ultimate decision because the fact of the mechanisms' prior approvals did not make the Commission more or less likely to approve the new SCRM and new AOM. The Commission considered the independent evidence and factual developments since the approvals of the old mechanisms in determining which aspects of the proposed new mechanisms should be granted and which should be denied.[9]

Based on the record in this case, the Commission approved a SCRM and an AOM that includes those activities that were beneficial to customers at numeric thresholds premised on the independent evidence presented corresponding to the achievement of those benefits.[10] However, TECO also proposed asset optimization activities such as REC sales and natural gas pipeline capacity release sales, which the Commission denied.[11]

Additionally, in this case TECO requested a Return on Equity (ROE) midpoint of 11.50 percent, an increase from the 10.20 percent it had been previously operating under. The ROE is the cost of common equity included in a company's calculation of its weighted average overall cost of capital used to establish a revenue requirement.

TECO's common equity is not publicly traded, therefore there were multiple variations of three financial models put forth by the Company and the parties that were considered by the Commission. The models used proxy groups of publicly-traded electric companies similar to TECO to arrive at an estimated range of appropriate ROEs. While there was no dispute about the use of the models or underlying ROE methodologies, the parties offered different inputs and adjustments to the ROE range. The Commission considered testimony from various experts for certain adjustments such as flotation costs associated with the sale and issuances of common stock, company-specific business risks, expected customer growth and requisite capital investment, and financial risks created by the introduction of debt into the capital structure. Ultimately, an ROE of 10.50 percent was authorized by the Commission, based on an average of the cost of equity models, including some modifications, with an additional adjustment based on TECO's specific business and weather risks as well as its flotation costs.

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[9] TR 105–06, 3611–14, 3123–25, 3127, 3160, 3165, 3168, 3354; EXH 29, MPN C14-1394; EXH 31, MPN C16-1516 – C16-1518.

[10] Order No. PSC-2025-0038-FOF-EI, issued February 3, 2025, in Docket Nos. 20240026-EI, 20230139-EI, & 20230090-EI, *In re: Petition for rate increase by Tampa Electric Company, In re: Petition for approval of 2023 depreciation and dismantlement study, by Tampa Electric Company*, & *In re: Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company*, pp. 171–73, 175.

[11] *Id.* at 175–76.

Finally, certain errors were alleged to have been made in the calculations for the revenue requirement used in the Final Order. Specifically, OPC alleges these errors are the result of inconsistencies in the underlying calculations that reveal revenue requirement errors in Attachments A and C of the Commission's Final Order. Three of these items address issues with rounded adjustment amounts, while the other three were due to inadvertent errors in the underlying calculations for determining TECO's revenue requirement.

OPC's Motion for Reconsideration

In its request for reconsideration, OPC argues that (1) the Commission overlooked the rule of law regarding administrative finality when it approved the SCRM and the AOM; (2) the Commission overlooked the burden of proof when it approved the SCRM and the AOM; (3) the Commission overlooked and failed to consider that increasing the midpoint ROE to 10.50 percent was unsupported by substantial and competent evidence and unnecessary; and (4) certain errors were made in the calculations for the revenue requirement used in the Final Order. Each of these claims is discussed below, along with TECO's response and staff's analysis and recommendation.

1. Administrative Finality and the SCRM and the AOM

OPC alleges that the "Commission overlooked the application of the doctrine of administrative finality in its decision." Specifically, OPC alleges that "[i]mporting specific provisions from the 2021 [Settlement] Agreement" violates the Commission's Order approving that settlement agreement which "approved the language that no term would have any precedential value." OPC claims that "by allowing TECO to seek and obtain adoption of the SCRM and the AOM in direct contravention of the approved 2021 Agreement prohibition language, the Commission is effectively vacating the 2021 Agreement Order three years later which would violate the doctrine of administrative finality."[12]

TECO's Response

TECO argues that the Commission did not overlook the rule of law regarding administrative finality when approving the SCRM and the AOM, and that OPC failed to raise this argument at the evidentiary hearing held in this case as well as in its post-hearing brief and has therefore waived this argument.[13] "[I]t is not an abuse of discretion to deny a motion for reconsideration

[12] Staff notes that despite the alleged pleading violation, OPC did not file a motion to enforce or compel compliance with Order No. PSC-2021-0423-S-EI. TECO filed its petition on April 2, 2024.

[13] *Chris Thompson, P.A. v. GEICO Indem. Co.*, 349 So. 3d 447, 448–49 (Fla. 4th DCA 2022) (citing *Bank of Am., N.A.*, 338 So. 3d at 341 n.2 (Fla. 3d DCA 2022) ("A trial court does not abuse its discretion in denying a motion for reconsideration or rehearing which raises an issue that could have, but wasn't, raised in the initial motion or at the initial hearing.")); *see also Kovic v. Kovic*, 336 So. 3d 22, 25 (Fla. 4th DCA 2022) (finding issue not preserved for appellate review where argument was first raised in motion for rehearing of order on appeal instead of during the hearing); *Best v. Educ. Affiliates, Inc.* 82 So. 3d 143, 146 (Fla. 4th DCA 2012) (declining to consider new evidence or argument raised for the first time in a motion for rehearing in the trial court); *Trinchitella v. D.R.F., Inc.*, 584 So. 2d 35, 35 (Fla. 4th DCA 1991) ("We cannot consider the issues raised for the first time in a motion for rehearing in the trial court.").

which raises an issue that could have been, but was not, raised" prior to filing the motion for reconsideration.[14]

Furthermore, TECO argues that the Commission relied on the uncontroverted evidence presented by the Company rather than relying on its own approval of the 2021 Settlement Agreement as the basis for approving the SCRM and the AOM. TECO points out OPC does not cite to any pleading where TECO asserted any precedent, and the Company explicitly disclaimed doing so at the hearing. Furthermore, TECO asserts its proposal in this case was different than the mechanism contained in the 2021 Settlement Agreement, undercutting any argument that the Commission simply approved the current AOM based only on its prior approval.

Staff's Analysis and Recommendation

It is staff's position that the Commission did not overlook the doctrine of administrative finality in disposing of OPC's precedential value argument when the Commission approved the SCRM and the AOM.

As an initial matter, staff agrees with TECO that this issue could have been raised prior to the Motion, and was not, which alone justifies denying the Motion in this regard.[15] "A trial court does not abuse its discretion in denying a motion for reconsideration or rehearing which raises an issue that could have, but [was not], raised in the initial motion or at the initial hearing."[16] In *Kovic v. Kovic*, the Fourth District Court of Appeal stated that arguments raised for the first time in a motion for reconsideration or rehearing of an order on appeal, instead of during the hearing, are not preserved for appellate review.[17]

Nonetheless, staff also submits that OPC's arguments conflate precedential principles with the administrative finality doctrine and ignore the bases upon which the Commission rendered its decisions. Precedential value pertains to the *influence* of a decision on future cases with similar facts or legal issues.[18] The doctrine of administrative finality focuses on the conclusiveness of administrative decisions. Administrative finality simply means "that there must be a 'terminal point in every proceeding . . . at which the parties and the public may rely on the decision as being final and dispositive of the rights and issues involved therein.'"[19] Nothing in the Final Order operates to undo any part of the 2021 Settlement Agreement. Administrative finality upholds the Commission's prior determinations based on the facts in those prior cases. Administrative finality does not prohibit a utility from seeking, or the Commission from approving, something in a subsequent rate case just because the Commission approved it as part of a prior settlement.

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[14] *Chris Thompson, P.A.*, 349 So. 3d at 448–49.
[15] *Id.*; *Bank of Am., N.A.*, 338 So. 3d at 341 n.2; *Kovic*, 336 So. 3d at 25; *Best*, 82 So. 3d at 146; *Trinchitella*, 584 So. 2d at 35.
[16] *Bank of Am., N.A.*, 338 So. 3d at 341 n.2.
[17] *Kovic*, 336 So. 3d at 25.
[18] *See e.g.*, *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871, 882–83 (Fla. 2007).
[19] *Fla. Power Corp. v. Garcia*, 780 So. 2d 34, 42 (Fla. 2001) (quoting *Austin Tupler Trucking, Inc. v. Hawkins*, 377 So. 2d 679, 681 (Fla. 1979).

Pursuant to the 2021 Settlement Agreement, the old SCRM and the old AOM terminated on December 31, 2024.[20] In this case, TECO petitioned for two mechanisms to be approved—the SCRM and the AOM. While the two mechanisms were initially *described* in a previous settlement agreement, TECO's request was for the Commission to approve new versions of these mechanisms based on the evidence it offered in this case, not based on any precedential weight of the 2021 Settlement Agreement.[21] Furthermore, TECO's newly proposed AOM included the additional activities of REC sales and natural gas pipeline capacity release sales, which were not authorized in the prior settlement agreement.

As OPC points out, the 2021 Settlement Agreement requires that "[n]o *Party* will assert in any proceeding before the Commission . . . that . . . any of the terms in the 2021 Agreement . . . have any precedential *value*,"[22] and in this case no party did.[23] OPC argues it was "entitled to rely on that order and the settlement agreement as being final and dispositive of the rights and issues involved therein,"[24] and it was allowed to do so. It is staff's position that the Commission did not overlook the doctrine of administrative finality in disposing of OPC's precedential value argument because the Commission did not give any precedential value to the 2021 Settlement Agreement. TECO presented evidence demonstrating the actual efficacy of the proposed mechanisms at specific numerical values. To simply compare the end results discounts the Commission's reasoned analysis, review of the record, and the weight it assigned to the evidence and testimony before it.

Additionally, the new SCRM approved by the Commission does not contain all of the same terms that were included in the prior SCRM that was approved in the 2021 Settlement Agreement. OPC's attempt at drawing parallels between TECO's old and new mechanisms is a red herring as it improperly implies that the Commission reached its decision in the present case simply because of the 2021 Settlement Agreement. However, the Commission's decision was based on the independent evidence introduced in this case. Moreover, references in this record to how the old mechanisms functioned since being approved were made to allow the Commission to assess how the newly proposed mechanisms would be beneficial to customers going forward. Thus the Commission was provided with a basis to determine whether the mechanisms should be approved now. Record testimony with comparisons to any "old" vs. "new" versions of the mechanisms show that the Commission's decision was not somehow based on the purported precedential value of the prior settlement, but rather, that the Commission grappled with what TECO was now petitioning for. Because the Commission did not approve the SCRM or the AOM on the basis that it was bound by precedent, but rather, held that the proposed mechanisms were supported by evidence in the record, the doctrine of administrative finality was not violated.

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[20] Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket Nos. 20210034-EI & 20200264-EI, *In re: Petition for rate increase by Tampa Electric Company, In re: Petition for approval of 2020 depreciation and dismantlement study and capital recovery schedules, by Tampa Electric Company*, pp. 37, 46.

[21] Document No. 01489-2024, TECO Petition, filed on April 2, 2024, in Docket No. 20240026-EI, pp. 17–18; *see also* Order No. PSC-2025-0038-FOF-EI, pp. 172, 175–77.

[22] Order No. PSC-2021-0423-S-EI, p. 50 (emphasis added).

[23] The parties to the 2021 Settlement Agreement included TECO, OPC, FIPUG, FRF, FEA, Walmart, and West Central Florida Hospital Utility Alliance. *Id.* at 7.

[24] Document No. 01008-2025, OPC Motion, filed on February 18, 2025, in Docket No. 20240026-EI, pp. 6–7.

Moreover, OPC's argument reads language into the 2021 Settlement Agreement that does not exist: that TECO was prohibited from ever requesting that the Commission authorize a similar, same, or different SCRM or AOM in a period beginning on or after January 1, 2025. TECO did not assert in its Petition or testimony that there was any precedential value to the fact that a SCRM or an AOM had previously been approved through the 2021 Settlement Agreement. TECO even disclaimed doing so at the hearing:

> [TECO] is not asserting that the Commission should approve this AOM because it's in an existing settlement agreement. We are asking you to approve it because of the facts and evidence in this case. We are in no way suggesting that because it was in the settlement agreement, it should have any more dignity or less dignity before the Commission right now.[25]

TECO's reference to the components of the two mechanisms in the 2021 Settlement Agreement, in an effort to describe the new SCRM and AOM it was requesting, is not the same as TECO arguing that precedent entitled it to a SCRM and an AOM. As evidenced by the Final Order, Order No. PSC-2025-0038-FOF-EI, the Commission did not approve the SCRM or AOM because precedent necessitated that result.[26] Nor did the Commission indicate it was more inclined to approve these mechanisms because they had been authorized previously. What the Commission did was rely upon the evidence and testimony presented during the hearing regarding the functioning, structure, operation, and performance of the mechanisms as the basis for authorizing a SCRM and an AOM to commence on January 1, 2025.[27] OPC's argument illogically suggests that if the Commission approves a certain mechanism in a prior rate case, it is precluded from including such mechanism in a subsequent rate case when the facts and circumstances at issue support doing so.

Staff recommends that the Commission reject OPC's attempts to use the administrative finality doctrine as a vehicle to resurrect the precedential value arguments OPC already raised in the post-hearing brief.[28] OPC's attempt to reframe its argument for another bite at the apple is not an appropriate basis for a motion for reconsideration. The Commission already considered essentially the same argument when issuing its decision and did not give precedential value to the 2021 Settlement Agreement and thus did not violate the doctrine of administrative finality.

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[25] TR 3155.

[26] Order No. PSC-2025-0038-FOF-EI, pp. 171–73, 175, 177.

[27] TR 105–06, 3611–14, 3123–25, 3127, 3160, 3165, 3168, 3354; EXH 29, MPN C14-1394; EXH 31, MPN C16-1516 – C16-1518. In its post-hearing brief, OPC asserted that "[o]utside of impermissible reliance on a term of [TECO's] . . . settlement, there is no basis for approving an AOM." Document No. 09619-2024, OPC Post-hearing Brief, filed October 21, 2024, in Docket No. 20240026-EI, p. 86. The Commission rejected and responded to this when it made clear it was not approving an AOM "merely because it was part of the 2021 Settlement Agreement," as OPC argued, but instead was approving the AOM based on the supporting evidence and testimony presented during the hearing. Order No. PSC-2025-0038-FOF-EI, p. 177.

[28] Document No. 09619-2024, OPC Post-hearing Brief, filed on October 21, 2024, in Docket No. 20240026-EI, pp. 83–87.

2. TECO's Burden of Proof and the SCRM and the AOM

OPC alleges that "the Final Order impermissibly shifts the burden of proof to the intervenors when it states '[f]urthermore, none of the intervenors argued to change specific aspects of the Provision or put forth evidence supporting which aspects should be revised.'" OPC argues this was made even more egregious as "OPC was entitled to rely on the Commission's approval of the expiration" of the AOM and SCRM on December 31, 2024, as dictated by the language of the 2021 Agreement Order.

Furthermore, OPC states that the Final Order acknowledges that "[n]o party provided testimony regarding this Issue" and that "TECO did not offer any independent evidence outside of the 2021 Agreement language itself to support its request." Finally, OPC states "[j]ust because the Commission has the statutory authority to approve certain provisions does not mean it can do so absent evidence independent of the prohibitive use of the 2021 Agreement provisions, nor does the Commission's inherent statutory authority to allow an activity absolve a utility of its burden to prove all elements of the rate increase request."

TECO's Response

TECO argues the Commission did not shift the burden of proof when approving the SCRM and the AOM. TECO further argues that OPC's claim "falsely presumes that the Commission's approval of the SCRM and the AOM was based solely on the precedential value of the 2021 Agreement" and that it "ignores the 'independent evidence' that [TECO] presented to support the SCR [sic] and the AOM, namely testimony regarding the benefits of those mechanisms."[29] TECO argues that OPC "conflates its own failure to offer evidence in opposition to [TECO's] evidence with burden-shifting." Additionally, TECO argues the Commission cannot simply disregard evidence that has been presented. "Where the testimony on the pivotal issues of fact is not contradicted or impeached in any respect, and no conflicting evidence is introduced, these statements of fact cannot be wholly disregarded or arbitrarily rejected."[30]

Staff's Analysis and Recommendation

It is staff's position that the Commission did not overlook the burden of proof when approving the SCRM and the AOM. TECO supported its requests for the SCRM and the AOM with sufficient evidence and testimony regarding the benefits to customers and the functioning of the mechanisms.[31] As mentioned previously, the SCRM establishes a process by which TECO may seek approval for a monetary surcharge and timing framework through which TECO recovers storm costs incurred to restore power to customers after damage caused by tropical systems, including the replenishment of the preexisting target storm reserve balance. The Commission has previously stated that its approval of interim storm cost recovery charges,

[29] Document No. 01114-2025, TECO Response, filed on February 25, 2025, in Docket No. 20240026-EI, pp. 6–7.
[30] *Guardian ad Litem Program v. K.H.*, 276 So. 3d 897, 902 n.2 (Fla. 3d DCA 2019) (quoting *Duncanson v. Serv. First, Inc.*, 157 So. 2d 696, 699 (Fla. 3d DCA 1963)).
[31] TR 105–06, 3611–14, 3123–25, 3127, 3160, 3165, 3168, 3354; EXH 29, MPN C14-1394; EXH 31, MPN C16-1516 – C16-1518.

> [I]s preliminary in nature and is subject to true-up pending further review once the total actual storm restoration costs are known. After actual costs are reviewed for prudence and reasonableness, and are compared to the actual amount recovered through the interim [charge], a determination will be made whether any over/under recovery has occurred and the appropriate steps to be taken for a refund or additional charge.[32]

Meanwhile, the AOM is a shareholder incentive program designed to encourage TECO to engage in additional activities with ratepayer-supported assets in order to generate additional net benefits and thereby produce customer savings in the form of reductions to fuel costs. TECO shareholders benefit as the customer savings increase, encouraging the Company to maximize the benefits it can extract from its existing assets. AOM activities can include efforts such as the release of contracted gas storage space during non-critical demand seasons, the sale of fuel using existing transportation capacity to non-TECO customers in Florida, and the sale of gas in the gas-production areas. The Commission considered the admitted evidence when determining what would and would not comprise both of the newly approved mechanisms.

The thrust of OPC's argument here is that the references in the Final Order to the fact that, on many issues, only TECO presented evidence indicates the Commission shifted the burden of proof to the intervenors. That is not the case. Rather, as the finder of fact, the Commission is tasked with weighing evidence presented and ensuring that there is enough substantial, competent evidence to support its findings.[33] If there is no competing evidence to weigh, the evidence that exists must still be substantial and competent to support the Commission's findings. Here, no one disputes that the burden of proof rested with TECO.[34] Staff submits that the Commission's decisions in this case are based on whether or not there was substantial and competent evidence to support TECO's requests. OPC's argument refuses to acknowledge the independent evidence that TECO presented to support the SCRM and the AOM. Two witnesses offered testimony regarding the benefits and functioning of those mechanisms, witnesses Chronister and Heisey, both on behalf of TECO. OPC cross-examined these witnesses and had the opportunity to object to any irrelevant or immaterial evidence those witnesses sought to introduce.[35]

The evidence presented by TECO was substantial and competent. TECO witness Chronister described how the SCRM will operate, including compliance with the Commission's storm cost recovery rules, avoidance of double collecting, the charges to replenish the target reserve liability, and describing how any over-collection would be refunded to ratepayers through a

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[32] Order No. PSC-2018-0125-PCO-EI, issued on March 7, 2018, in Docket No. 20170271-EI, *In re: Petition for recovery of costs associated with named tropical systems during the 2015, 2016, and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up, Tampa Electric Company*, p. 3.

[33] *E.g.*, *So. All. For Clean Energy v. Graham*, 113 So. 3d 742, 752–53 (Fla. 2013); *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785, 790 (Fla. 2007).

[34] "The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility." *Florida Pub. Serv. Comm'n v. Fla. Waterworks Ass'n*, 731 So. 2d 836, 841 (Fla. 1st DCA 1999) (citing *So. Fla. Natural Gas Co. v. Florida Pub. Serv. Comm'n*, 534 So. 2d 695 (Fla. 1988)).

[35] TR 3145–53, 3156–61, 3171–72; 3502–57, 3563, 3638.

clause proceeding to avoid separate docket expense.[36] He testified that the SCRM has "served the company and its customers well by providing an efficient regulatory mechanism for review and recovery of prudent storm damage restoration and recovery costs."[37] The cross-examination of TECO witness Chronister did not diminish the probative value of his testimony and supporting evidence. Thus, TECO met its burden of proof by a preponderance of evidence that the proposed SCRM should be authorized to commence on January 1, 2025.

TECO witness Heisey testified that "[t]he [AOM] was designed to create additional value for [TECO's] customers while incenting the company to maximize gains on power transactions and optimization activities."[38] The witness described the activities that TECO requested be eligible for inclusion in the AOM.[39] Under the proposed AOM,

> [G]ains on eligible activities up to $4.5 million are retained by customers. Gains between $4.5 million and $8 million are split, with 60 percent of gains allocated to the company's shareholders and 40 percent allocated to customers. Gains above $8 million are also split, with 50 percent of gains allocated to shareholders and 50 percent of gains allocated to customers.[40]

TECO witness Heisey testified, "If you look at the results of the mechanism for the last six years, compared to a different mechanism for the previous six years, the benefits are almost four times higher . . . . It produces, again, a lot of benefits for customers."[41] Over the last six years the prior AOMs generated over $45 million in benefits to customers,[42] which equals roughly 68 percent of total gains.[43] Specifically, from 2021 through 2023, AOM activities resulted in over $21 million in benefits to customers.[44] This reveals years of successful implementation and customer benefits generated under those AOM parameters. Furthermore, TECO witness Collins testified that these gains flow directly through the fuel cost recovery clause each year and help lower customer bills.[45] Without the AOM, TECO witness Heisey indicated skepticism about TECO's capacity to produce similar benefits for ratepayers because, to effectively implement the AOM, TECO had to incur additional labor costs to establish processes and manage the optimization activities.[46]

However, the Commission was not persuaded to include REC sales and natural gas pipeline capacity release sales as permissible asset optimization activities for TECO and therefore denied those aspects of the newly proposed AOM. Overall, the Commission was convinced that

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[36] TR 3611–14; EXH 31, MPN C16-1516 – C16-1518; *see also* Order No. PSC-95-0255-FOF-EI, issued on February 23, 1995, in Docket No. 930987-EI, *In re: Investigation into currently authorized return on equity of Tampa Electric Company*, pp. 3–4 (finding target storm reserve amount of $55 million reasonable); Order No. PSC-2018-0125-PCO-EI, p. 2 (authorizing interim replenishment of preexisting storm reserve to approximately $55.9 million).
[37] TR 3354.
[38] TR 3127.
[39] TR 3123–25, 3127–30.
[40] TR 3123; *see also* TR 3160.
[41] TR 3165.
[42] TR 3127.
[43] EXH 29, MPN C14-1394.
[44] *Id.*
[45] TR 105–06.
[46] TR 3125, 3168.

approving a modified version of the new AOM would generate similar benefits for ratepayers. Thus, the testimony and supporting evidence from TECO witness Heisey was sufficiently probative to justify by a preponderance of evidence that the new AOM, as modified by the Commission, should be authorized to commence on January 1, 2025.[47]

Finally, OPC insinuates that the Commission ordered the establishment of a generic AOM proceeding because no testimony or evidence shows how to structure TECO's new AOM. However, that assertion mischaracterizes the Commission's ruling. As the Commission explained in its Final Order, the record before it revealed differences between the various AOMs of each electric investor-owned utility in terms of the types of asset optimization activities allowed and the revenue-sharing thresholds established.[48] The Commission therefore felt it appropriate to have staff investigate the dissonance and ultimately recommend whether uniformity through rulemaking was warranted.

TECO met its evidentiary burden to support the approval of the proposed SCRM and the proposed AOM, as modified by the Commission, based on what it presented. The Commission did not engage in burden shifting; the lack of contradictory testimony or evidence from the intervenors did not reduce TECO's burden nor did the Commission weigh such absence in TECO's favor. Once TECO established by preponderance of reasonable and credible evidence that the mechanisms should be approved, the Commission could not disregard the evidence simply because another party disagreed. "Where the testimony on the pivotal issues of fact is not contradicted or impeached in any respect, and no conflicting evidence is introduced, these statements of fact cannot be wholly disregarded or arbitrarily rejected."[49] The Commission did not find TECO witness Chronister's or TECO witness Heisey's testimonies[50] regarding the mechanisms to be inconsistent, discredited, impeached, shaky, not thorough, or not credible.[51] Therefore, the Commission's observations that no intervenor provided testimony on the mechanisms simply recognizes that there was no conflicting testimony to weigh and that the evidence presented on these issues supported approving the SCRM and the AOM. After considering what was presented by TECO, the Commission was persuaded by the probative value of the evidence and found there was sufficient basis to approve a new SCRM and new AOM.[52]

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[47] TR 3131.

[48] Order No. PSC-2025-0038-FOF-EI, pp. 176–77.

[49] *Guardian ad Litem Program v. K.H.*, 276 So. 3d at 902 n.2 (quoting *Duncanson*, 157 So. 2d at 699). "A court must accept evidence which . . . is neither impeached, discredited, controverted, contradictory within itself, or physically impossible." *State v. Fernandez*, 526 So. 2d 192, 193 (Fla. 3d DCA 1988) (reversing trial court for denying state's petition on basis of witness credibility when defendant's own investigator had produced corroborative evidence).

[50] The Commission was not persuaded by TECO witness Heisey to include, at this time, REC sales or natural gas pipeline capacity sales as qualifying asset optimization activities.

[51] *See Michael Fox M.D. v. Dep't of Health*, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) ("It is well-established that the [Administrative Law Judge] was not required to believe Appellant's testimony, even if unrebutted."); *Dep't of Children & Families v. J.J.*, 368 So. 3d 1017, 1022 (Fla. 5th DCA 2023) (reversing trial court for ignoring testimony of two child witnesses when it had refused to assess their credibility).

[52] By approving a new SCRM and new AOM, the Commission continues to authorize TECO to have a storm cost recovery mechanism and an asset optimization mechanism.

3. The Midpoint ROE at 10.50 percent

OPC raises two concerns in regard to the Commission's decision on ROE: "(1) there was no citation during the deliberations or in the Final Order to substantial and competent record evidence to support a 10.50 percent ROE calculation; and (2) there was no discussion or consideration during the deliberations or in the Final Order that was based on those deliberations of how TECO's size and severe weather risks are already mitigated through other cost-recovery mechanisms." Specifically, OPC states that "[n]o reasonable mind would accept that the evidence in this case is adequate to support the Commission's arbitrary conclusion that a 10.50 percent ROE would mitigate the risks expressed by the Commission while a 10.30 percent ROE would not." Moreover, OPC noted that TECO already has other avenues, such as the Storm Protection Plan Cost Recovery Clause, to mitigate potential weather risks.

TECO's Response

TECO argues the Commission's decision approving an ROE midpoint of 10.50 percent was supported by substantial and competent evidence, and states that OPC's three arguments regarding the Commission's decision on ROE have no merit and should be rejected. First, TECO states that "[t]he Final Order properly notes that the 'collective range of the witnesses' cost of equity model results was 8.85 percent to 11.91 percent." Therefore, TECO argues, the Commission's decision "is well within the range of ROE's supported by the expert testimony in the record" and is "well-reasoned, well-explained, and based on record evidence that includes the intervening parties' own expert testimony." Additionally, TECO claims OPC erroneously asks the Commission to justify any deviation from staff's recommendation, a recommendation which is advice, not evidence, and which the Commission is free to accept or reject.[53] Finally, TECO argues that OPC "erroneously asserts that the Commission failed to consider the company's ability to recover storm restoration costs from customers as a mitigating factor in assessing the company's financial risk." TECO argues that the Final Order explicitly considers the mitigating impact of the SCRM when evaluating the appropriate ROE for the company.

Staff's Analysis and Recommendation

It is staff's position that the Commission's decision to select 10.50 percent as an ROE midpoint is supported by substantial and competent evidence. The Commission was confronted with a considerable amount of competing testimony on this issue, including over 20 variations of financial models provided by three competing witnesses and further testimony provided by two additional witnesses. All of this testimony was subject to a lengthy discovery process and further cross examination in hearing. As argued by TECO in its Response, the Final Order extensively discusses these models and their inputs and outputs as well as a comparison of the risks between TECO and the proxy group used to estimate TECO's market-based cost of equity.[54] Because these experts provided a considerable range of differing estimates for the ROE, which were

[53] Order No. PSC-95-0097-FOF-EI, issued on January 18, 1995, in Docket No. 930444-EI.
[54] *See* Order No. PSC-2025-0038-FOF-EI, pp.80–95.

supported by a reasonable factual basis for TECO, it is within the Commission's purview to determine the appropriate weight to accord these opinions.[55]

Additionally, TECO established through expert testimony that TECO faces unique risks due to its lack of geographic diversity, specifically having a highly concentrated service territory located in an area prone to potentially devastating hurricanes which may cause considerable damage to a high percentage of TECO's territory.[56] Despite his analysis indicating a specific size adjustment was not necessary, TECO witness D'Ascendis noted the "company's lack of geographic diversity due to its small size is cause for concern." He also noted that TECO's risk associated with extreme weather events is relatively high as compared to the utility proxy group.[57] Having established this risk, and with the various experts offering reasonable methods to interpret and account for the risk, the Commission was justified in accepting or reasonably modifying those methods.[58] Considering the unique aspects of TECO's business, determining the fair and proper rate of return is particularly "a matter of opinion which necessarily had to be infused by policy considerations for which the PSC has special responsibility."[59] Furthermore, the Commission enjoys considerable discretion when adjusting rates within a fair rate of return range, including making adjustments to a rate within a given range.[60]

Finally, staff believes OPC's second point, its assertion that there was no discussion that TECO's size and severe weather risks are already mitigated through other cost-recovery mechanisms, is misguided. As noted in the Final Order, TECO's ability to recover storm costs outside of a rate case does not entirely mitigate its risks.[61] The Final Order also notes that the increasing frequency of hurricanes and other large storms will only increase both the costs of storm recovery and the need to recover those costs.[62]

4. The Revenue Requirement in the Final Order

OPC included an attachment that lists 6 potential errors found in the calculations for the revenue requirement in the Final Order. OPC alleges these errors are the result of inconsistencies that reveal revenue requirement errors in Attachments A and C of the Commission's Final Order. Item Nos. 1, 4, and 5 address corrections to rounded adjustment amounts included in the Excel calculation of TECO's revenue requirement, while items 2, 3, and 6 were due to inadvertent errors in the underlying calculations for determining the revenue requirement.

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[55] *See Gulf Power Co. v. Fla. Pub. Serv. Comm'n*, 453 So .2d 799, 805 (Fla. 1984); *see also Rolling Oaks Utils., Inc. v. Fla. Pub. Serv. Comm'n*, 533 So. 2d 770, 772 (Fla. 1988).
[56] TR 1885–90.
[57] TR 1887.
[58] *See Citizens of the State of Fla. v. Fla. Pub. Serv. Comm'n*, 440 So. 2d 371, 372 (Fla. 1st DCA 1983).
[59] *See Utils., Inc. of Fla. v. Fla. Pub. Serv. Comm'n*, 420 So. 2d 331, 333 (Fla. 1st DCA 1982).
[60] *See Gulf Power Co. v. Wilson*, 597 So. 2d 270, 271 (Fla. 1992); *see also United Tel. Co. v. Mann*, 403 So. 2d 962 (Fla. 1981).
[61] Order No. PSC-2025-0038-FOF-EI, pp. 92–93.
[62] *Id.* at 93.

TECO's Response

In regard to the potential errors identified by OPC, TECO states that it "cannot determine with precision … whether there were errors made in the calculation of the 2025 base rate increase." TECO argues, however, that the administrative cost and customer confusion associated with implementing small base rate changes in order to respond to OPC's alleged calculation errors, in the middle of a calendar year, should be avoided. If corrections are necessary, TECO proposes to recover (or return) the incremental (or decremental) amount of revenue identified through one of the company's cost recovery clauses and into any subsequent year adjustments for periods beyond 2025.

Staff's Analysis and Recommendation

Included in OPC's Motion was an attachment identifying six corrections to the Commission's revenue requirement calculation. Staff agrees with all proposed corrections, with one adjustment for Item 3. Item Nos. 1, 4, and 5 address corrections related to rounded adjustment amounts. OPC's suggested corrections are as follows:

- Item No. 1, associated with the removal of the Microgrid project, should be corrected, resulting in a reduction of $46,972 to Plant and $1,635 to Accumulated Depreciation and Depreciation Expense.
- Item No. 4, associated with the normalization of Generation O&M Expense, should be corrected, resulting in an increase of $86,667 to working capital and reduction of $16,667 to O&M Expense.
- Item No. 5, associated with the Commission's reduction of corporate responsibility costs, should be corrected, resulting in a reduction of $1,027 to O&M Expense.

The remaining corrections OPC pointed out in its motion were due to inadvertent errors in the underlying calculations of the revenue requirement. These are as follows:

- Item No. 2 is a correction to the inclusion of the common equity component in the ITC rate used to calculate the fallout interest synchronization, resulting in a decrease of $31,918 to Income Tax Expense.
- Item No. 3, associated with the removal of Customer Digitalization projects, is a correction to the factored adjustment amount in the calculation, which included an additional "0," resulting in an increase of $1,566,000 to O&M Expense to correct the overstated reduction. In its attachment, OPC calculated the correction's impact by removing $174 from the overstated reduction of $1,740,000, instead of $174,000, resulting in an incorrect reference to the amount of $1,739,826 ($1,740,000 - $174).
- Item No. 6, associated with the removal of half of Directors and Officers Liability insurance expense, is a correction to include a second component of the total expense removed, resulting in a decrease of $376,500 to O&M Expense.

In sum, OPC's corrections listed in Item Nos. 1–6 result in net increases of $41,330 to Rate Base and $1,138,253 to Operating Expenses. In total, including corresponding adjustments to Income Tax Expense and the corresponding multiplier, OPC's corrections result in a revenue requirement increase of $1.1 million, which is an increase of 0.61 percent.

Because the corrections result in a rate increase to the customers, staff recommends the Energy Conservation Cost Recovery Clause (ECCR) be utilized to recover the 2025 impacts of the correction to TECO's revenue requirements to minimize the impact to the customers. The ECCR mimics the rate design used to establish base rates, and ECCR factors for residential and small commercial are on an energy basis (cents/kWh) and ECCR factors for demand billed customers are on a demand basis ($/kW).

Conclusion

Staff believes that TECO met its burden for both the SCRM and the AOM, as modified by the Commission, by presenting sufficient independent evidence and testimony regarding the benefits to customers and the functioning of the mechanisms. The Commission appropriately weighed the evidence before it when approving the new SCRM and new AOM. Additionally, staff recommends that the Commission reject OPC's interpretation of the administrative finality doctrine as the Commission already considered substantially the same argument when issuing its Final Order and the Commission neither violated the doctrine nor gave precedential value to the 2021 Settlement Agreement in reaching its decision.

Staff believes the Commission's decision to select 10.50 percent as an ROE midpoint is supported by substantial and competent evidence and was reasonable given the unique aspects of TECO's business. The Commission was confronted with a considerable amount of competing testimony including over 20 variations of financial models provided by three competing witnesses and further testimony provided by two additional witnesses. Additionally, TECO established that it faces unique risks due to its geography, namely having a highly concentrated service territory located in an area prone to potentially devastating hurricanes which may cause considerable damage to a high percentage of TECO's territory.

Ultimately, staff recommends that OPC's Motion for Reconsideration should be denied regarding the AOM, SCRM, and ROE determinations, however, the Motion should be granted to correct the identified errors in the calculation of the revenue requirement. The resulting $1.1 million increase in revenue requirement should be recovered for 2025 through the Energy Conservation Cost Recovery Clause and then in 2026 going forward when implementing SYA rates.

Issue 3: Should OPC's request for clarification be granted?

Recommendation: Yes, in part. Staff recommends that the Commission deny the part of OPC's Motion for Clarification related to requested numerical values and evidentiary support. The Commission's Final Order, together with the above discussion in Issue 2 regarding burden of proof, is sufficiently clear on those matters. However, staff recommends that the Commission grant the part of OPC's Motion for Clarification seeking clarity regarding a description of what comprises the SCRM and the AOM and that the Final Order be revised to include clarification language as outlined below. (Sparks, Marquez, Harper, P. Buys, O. Wooten)

Staff Analysis:

Law

Neither the Uniform Rules of Procedure nor Commission rules specifically allow for a motion for clarification. However, the Commission has typically applied the *Diamond Cab Co. of Miami v. King* standard in evaluating a request for clarification when the motion actually sought reconsideration of some part of the substance of an order.[63] "In cases where the motion sought only explanation or clarification of a Commission order, [the Commission has] typically considered whether the order requires further explanation or clarification to fully make clear its intent."[64]

OPC's Motion

OPC seeks clarification regarding the SCRM and the AOM on both the specifics of these mechanisms as well as their evidentiary support. Specifically, OPC requests the Commission clarify whether provision 8(c) of the 2021 Settlement Agreement was adopted in the Final Order and, if so, whether the Commission intended to deny the rights of substantially affected parties from litigating earnings and cost savings offsets in future proceedings involving TECO's efforts to recover future storm costs. OPC also "seeks clarification regarding which numerical values and other terms and conditions the Commission is approving from the 2021 Agreement" in regard to the SCRM provision. Finally, OPC seeks clarification regarding the AOM provision as well as an identification of the numerical values and evidentiary support for the values, terms, and conditions approved.

TECO's Response

In response to OPC's Motion for Clarification, the company offered the following thoughts "for the Commission's consideration." The Final Order clearly reflects that the Commission approved TECO's request that the SCRM and the AOM be approved in their entirety but did not approve

[63] *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889 (Fla. 1962).
[64] Order No. PSC-04-0228-FOF-TP, issued March 2, 2004, in Docket Nos. 981834-TP & 990321-TP, *In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory*, & *In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.*

the company's proposed modifications to the AOM. TECO alleges that OPC's assertion that the inclusion of certain language, specifically Paragraph 8(c), from the 2021 Agreement impairs the rights of potential future litigants in storm cost recovery proceedings is misguided, and TECO asserts the Commission has always had the authority to determine the scope of the issues to be addressed in a proceeding.

Staff's Analysis and Recommendation

As a preliminary matter, the Final Order and the discussion above regarding burden of proof are sufficiently clear about what testimony and evidence the Commission relied upon in approving the SCRM and the AOM.[65] No further explanation is needed regarding the numerical values in, or evidentiary support for, the two newly approved mechanisms.

However, there appears to be some confusion amongst the parties regarding what comprises the approved SCRM and AOM, which staff will address in more detail below. Specifically, OPC raises concerns about whether Paragraph 8(c), from the 2021 Settlement Agreement, was incorporated into the new SCRM. That provision stated:

> The Parties expressly agree that any proceeding to recover costs associated with any storm shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of [TECO] and shall not apply any form of earnings test or measure or consider previous or current base rate earnings. Such issues may be fully addressed in any subsequent [TECO] base rate case.[66]

Because this prohibition was not discussed in the Commission's Final Order, it was clear that the Commission did not intend to include it in the new SCRM. Instead, staff submits that the applicable rule and statute would guide the relevancy and scope of any future storm cost recovery proceeding.

As stated above, the Commission approved a new SCRM and new AOM to commence on January 1, 2025. To clarify what the two mechanisms are comprised of, staff summarizes below the SCRM and the AOM approved in the Final Order.

1. *Storm Cost Recovery Mechanism*

The recovery of storm costs from customers will begin on an interim basis (subject to refund following a hearing or a full opportunity for a formal proceeding) sixty days following TECO's filing of a cost recovery petition and tariff.[67] The petition will be based on a 12-month recovery

[65] Order No. PSC-2025-0038-FOF-EI, pp. 171–77.
[66] Order No. PSC-2021-0423-S-EI, p. 37.
[67] TECO will continue to implement the Process Improvements detailed in Order No. PSC-2019-0234-AS-EI, which contribute to the safe and efficient restoration of customer outages as well as reduce the likelihood of future disputes regarding storm restoration costs. Order No. PSC-2019-0234-AS-EI, issued June 14, 2019, in Docket No. 20170271-EI, *In re: Petition for recovery of costs associated with named tropical systems during the 2015, 2016, and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up, Tampa Electric Company*, pp. 5, 17–23, 28–29.

period if the storm costs do not exceed $4.00/1,000 kWh on monthly residential customer bills. In the event TECO's reasonable and prudent storm costs exceed that level, any additional costs in excess of $4.00/1,000 kWh per month will be recovered in a subsequent year or years as determined by this Commission. All storm-related costs must be calculated and disposed of pursuant to Rule 25-6.0143, F.A.C., and will be limited to (1) costs resulting from such tropical system named by the National Hurricane Center or its successor, (2) the estimate of incremental storm restoration costs above the level of storm reserve prior to the storm, and (3) the replenishment of the storm reserve to $55,860,642.

The monthly $4.00/1,000 kWh cap will apply in the aggregate for a calendar year; however, TECO may petition the Commission to increase the initial 12-month recovery period to rates greater than $4.00/1,000 kWh or for a period longer than 12 months if TECO incurs over $100 million of qualifying storm recovery costs in a given calendar year, inclusive of the amount needed to replenish the storm reserve.

2. *Asset Optimization Mechanism*

TECO's Asset Optimization Activities include efforts such as:

(1) Gas storage utilization. TECO may release contracted storage space or sell stored gas during non-critical demand seasons.

(2) Delivered gas sales using existing transport. TECO may sell gas to Florida customers, using TECO's existing gas transportation capacity during periods when it is not needed to serve TECO's native electric load.

(3) Production (upstream) area sales. TECO may sell gas in the gas-production areas, using TECO's existing gas transportation capacity during periods when it is not needed to serve TECO's native electric load.

(4) Asset Management Agreement. TECO may outsource optimization functions to a third party through assignment of power, transportation, and/or storage rights in exchange for a premium to be paid to TECO.

In carrying out Asset Optimization Activities, TECO will not require any native load customer to be interrupted in order to initiate or maintain an economy sale.

Each year, TECO customers will receive 100 percent of the gains from Asset Optimization Activities up to a threshold of $4.5 million. Incremental gains above the $4.5 million will be shared between TECO and customers as follows: TECO will retain 60 percent and customers will receive 40 percent of incremental gains realized above $4.5 million up to $8 million; and TECO will retain 50 percent and customers will receive 50 percent of all incremental gains in excess of $8 million.

Each year, as part of its fuel cost recovery clause (Fuel Clause) final true-up filing, TECO will file a schedule showing its gains in the prior calendar year on short-term wholesale sales, short-term wholesale purchases, and all forms of asset optimization that it undertook in that year (the

Total Gains Schedule). TECO's final true-up filing will include a description of each asset optimization activity for which gains are included on the Total Gains Schedule for the prior year, and such measures will be subject to review by this Commission to confirm that they are eligible for inclusion in the AOM. The customers' portion of total gains will be shown as a reduction to the fuel costs that are recovered through the Fuel Clause factors. TECO will recover its portion of total gains through adjustments to its Fuel Clause factors that are made in the normal course of calculating those factors and that flow through to all rate classes in the same manner as other costs recovered through the factors. However, TECO may not recover through the Fuel Clause any incremental costs incurred to add personnel, software, or associated hardware needed to manage the expanded short-term and wholesale purchases, sales programs, or asset optimization activities. TECO's final true-up filing will separately state and describe the incremental optimization costs it incurred in the prior year, and such costs will be subject to review and approval by us.

Several activities are excluded from TECO's Asset Optimization Activities, including the release of natural gas pipeline capacity by TECO directly or indirectly (e.g., via affiliate arrangements), retirement/release of railcars, and the sale of renewable energy credits.

Conclusion

Staff recommends that the Commission deny the part of OPC's Motion for Clarification related to requested numerical values and evidentiary support. The Commission's Final Order, together with the above discussion in Issue 2 regarding burden of proof, is sufficiently clear on those matters. However, staff recommends that the Commission grant the part of OPC's Motion for Clarification seeking clarity regarding a description of what comprises the SCRM and the AOM and that the Final Order be revised to include clarification language as outlined above.

Issue 4: Should these dockets be closed?

Recommendation: No. These dockets should remain open while the appeals filed by OPC and FL Rising/LULAC are processed by the Florida Supreme Court. (Sparks, Marquez, Harper)