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DATE: January 26, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Rodan) *JAR*
Division of Economic Regulation (Bohrmann, McNulty) *Tb WBM TPD/CLT*

RE: Docket No. 060001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

AGENDA: 02/07/06 – Regular Agenda – Decision on Motion for Clarification or, in the Alternative, Reconsideration of Final Order – Oral Argument Requested

COMMISSIONERS ASSIGNED: Post Hearing Recommendation - Participation Limited to Commissioners Edgar, Deason, and Arriaga

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060001.RCM.DOC

Case Background

By Order No. PSC-05-1252-FOF-EI, issued December 23, 2005, in Docket No. 050001-EI ("Fuel Order"), the 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 on its motion. TECO filed a response to OPC's motion and request for oral argument on January 9, 2006.

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The Commission has jurisdiction over this subject matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant OPC's request for oral argument on its motion for clarification or, in the alternative, reconsideration of Order No. PSC-05-1252-FOF-EI?

Recommendation: No. Staff believes that the motion is clear on its face. However, if the Commission believes that oral argument would be helpful, it has the discretion to allow such argument. (Rodan)

Staff Analysis: In its request for oral argument, OPC asserts that oral argument on the matters raised in its motion will assist the Commission in understanding the scope of its request to the extent any questions remain which have not been addressed in the pleading. In its response to OPC's request, TECO asserts that oral argument is unnecessary and should be denied.

Rule 25-22.060, Florida Administrative Code, provides that the Commission, at its discretion, may grant a request for oral argument on a motion for reconsideration of a final order, such as the Fuel Order. The Commission has traditionally granted oral argument upon a finding that oral argument would aid the Commission in its understanding and disposition of the underlying motion. OPC's arguments set forth in its motion are well articulated. Staff believes that the underlying motion is clear on its face and oral argument is not necessary to aid the Commission in its decision on the motion. However, if the Commission believes that oral argument would be helpful, it has the discretion to allow such argument. In the event the Commission grants oral argument, staff recommends a limit of five minutes per side. Thus, staff recommends that the Commission deny OPC's request for oral argument on its motion for clarification or, in the alternative, reconsideration, which is addressed in Issue 2, below.

Issue 2: Should the Commission grant OPC's motion for clarification or, in the alternative, reconsideration of Order No. PSC-05-1252-FOF-EI?

Recommendation: Yes. The Commission should clarify Order No. PSC-05-1252-FOF-EI as requested in OPC's motion. (Rodan, Bohrmann)

Staff Analysis: By its motion, OPC asks the Commission to clarify that the portion of its 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 the Commission 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 the Commission's consideration. OPC states that such clarification is needed to conform the Fuel Order to the Commission's comments made in rendering its 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 Commission consideration of any party's proposed modifications to the GPIF mechanism. If the Commission, by its Fuel Order, intends to limit any discussion of GPIF manual revisions to TECO and staff and intends that such a meeting is a precondition to any consideration of the establishment of a docket addressing the GPIF mechanism, then OPC asks the Commission to reconsider that decision.

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 the 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 the Fuel Order to mean that the subject of its GPIF should be addressed. TECO further asserts that it does not believe the 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, the Commission 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.

Staff believes that the clarification sought by OPC is appropriate. Staff does not believe that the Commission intended to limit discussion of the GPIF manual solely to TECO and staff.

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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. Based on the foregoing, the Commission should 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 the Commission did not intend that such a meeting is a condition precedent to the right and ability of any party to propose modifications to the GPIF mechanism for the Commission's consideration.

In sum, staff recommends that the Commission clarify Order No. PSC-05-1252-FOF-EI as requested in OPC's motion.

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Issue 3: Should this docket be closed?

Recommendation: This docket is an ongoing docket and should remain open. (Rodan)

Staff Analysis: The fuel and purchased power cost recovery docket is an ongoing docket and should remain open.