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May 22, 2009

HAND DELIVERED

Ms. Ann Cole, Director
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition for Rate Increase by Tampa Electric Company
FPSC Docket No. 080317-EI

Dear Ms. Cole:

Enclosed for filing in the above docket are the original and twenty (20) copies of each of the following:

1. Tampa Electric Company's Response to Intervenors' Motion for Reconsideration.

2. Tampa Electric Company's Conditional Request for Oral Argument on Intervenors' Motion for Reconsideration.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

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OPC Enclosures
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SSC 1
SGA 2
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cc: All Parties of Record (w/encls.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Tampa Electric Company.	DOCKET NO. 080317-EI
	FILED: May 22, 2009

TAMPA ELECTRIC COMPANY'S
RESPONSE TO INTERVENORS' MOTION FOR RECONSIDERATION

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 25-22.060, Florida Administrative Code, submits this its response to the Motion for Reconsideration ("Motion") filed May 15, 2009 on behalf of the Citizens of the State of Florida, through the Office of Public Counsel ("OPC"), Florida Retail Federation, Florida Industrial Power Users Group, AARP and the Office of the Attorney General of Florida ("Intervenors"). As detailed below, Intervenors' Motion is but a re-argument, in several variations, of their general opposition expressed throughout this proceeding to the base rate recognition of the valuable benefits Tampa Electric's customers will derive from the company's significant investment in five combustion turbine ("CT") generating facilities and a new rail unloading facility at Big Bend Station. As such, Intervenors' Motion exceeds the allowed purpose of a motion for reconsideration and should be denied.

Standard of Review

The sole permissible purpose of a motion for reconsideration is, as Intervenors concede in their Motion, to bring to the attention of the trier of fact some factual or legal point it overlooked or failed to consider when it rendered its decision in the first instance. Diamond Cab Company of Miami v. King, 146 So.2d, 889 (Fla. 1962). As the Court observed in Diamond Cab Company:

> It [A motion for reconsideration] is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or order.

In State ex. rel. Jaytex Realty Company v. Green, 105 So.2d, 817 (Fla 1958) (cited in Intervenors' Motion), the Court stated:

> The sole and only purpose of a petition for rehearing is to call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision.
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> * * *
>
> It is not a compliment to the intelligence, the competency or the industry of the court for it to be told in each case which it decides that it has 'overlooked and failed to consider' from three to twenty matters which, had they been given proper weight, would have necessitated a different decision.

Intervenors' Motion challenging the step increase approved by the Commission is little more than a re-argument of the points raised by Intervenors in opposition to annualizing the five CTs and rail unloading facility during the course of the proceeding that gave rise to the Commission's final order, Order No. PSC-09-0238-FOF-EI ("the Order" or "Order No. 09-0283"). The Motion re-argues positions previously urged by Intervenors in an attempt to undo alternative relief decided by the Commission which is less than that requested by Tampa Electric. Such re-argument is contrary to the appropriate scope of reconsideration under Diamond Cab Company and should be rejected.

For the convenience of the Commission, Tampa Electric has followed the numerical sequence of Intervenors' alleged bases for reconsideration, beginning on page 6 of their Motion.

1. ***No Departure from the Essential Requirements of Law or Lack of Notice or Opportunity to Litigate.***

There was no departure from the essential requirements of law – the step increase was an implicit form of base rate relief within the relief requested by Tampa Electric. By approving the

step increase, the Commission recognized Tampa Electric's significant investment in the five CTs and rail unloading facility but deferred the recovery of these investments from beginning on May 7, 2009 to January 1, 2010 in order to resolve the matching concerns raised by Intervenors with respect to these investments. The Commission's approval of the step increase was procedurally sound and is supported by the record.

From a procedural perspective, the Commission could have approved the annualization of these assets as requested by Tampa Electric. Tampa Electric presented a strong case for its requested annualization of these new projects, pointing out the significant benefits they will provide to the company's customers in 2009 and beyond. As Tampa Electric witness Jeffrey Chronister testified, the Commission has previously approved the annualization of assets being placed in service during a projected test year:

> In Docket Nos. 830470-EI and 910890-EI, the Commission accepted adjustments that PEF (formerly Florida Power Corporation) made to its projected test years to annualize the impacts of new units being placed into service.[1] Also, in the most recent base rate proceeding for FPUC,[2] the Commission determined that it was appropriate to include the full 13-month average amount of a new asset and associated accumulated depreciation and depreciation expense in the test year for ratemaking purposes because it was representative of the future even though it went in service after the beginning of the test year. Based on this precedent, it is appropriate to annualize the CTs in 2009. (Tr. 1457, line 16 – Tr. 1458, line 7)

Rather than approving the requested annualization, the Commission elected to defer recognition of the five CTs and rail unloading facility in base rates until January 1, 2010, when they will all be completed and in service. By deferring recognition of these new assets in base rates, the Commission essentially granted less than the base rate relief that would have resulted

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[1] In re: Florida Power Corporation, Docket No. 830470-EI, Order No. 13771 (10/12/84), pp. 3-4, 6-8 and 56; Docket No. 910890-EI, Order Numbers PSC-92-0606-PHO-EI (7/7/92), pp. 180-182 and PSC-92-1194-FOF-EI (10/22/92), p. 88

[2] In re: Florida Public Utilities, Docket No. 070300-EI, supra, pp. 21-24

from the annualization approach requested by Tampa Electric. In so doing, the Commission clearly acted within its broad scope of authority to set rates.

The Commission has considerable discretion and latitude in the ratemaking process. See, Citizens v. Public Service Commission, 425 So.2d 534, 540 (Fla. 1982) ("This court has consistently recognized the broad legislative grant of authority which these statutes [Sections 366.06(2) and 366.05(1), Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation."); Gulf Power Co. v. Bevis, 296 So.2d 482, 487 (Fla. 1974) ("As pointed out by the Commission, it has considerable discretion and latitude in the rate fixing process."); Storey v. Mayo, 217 So. 2d 304, 307 (Fla. 1968) ("The regulatory powers of the Commission . . . are exclusive and, therefore, necessarily broad and comprehensive."); City of Miami v. Florida Public Service Commission, 208 So.2d 249, 253 (Fla. 1968) ("It is quite apparent that these statutes [Sections 364.14 and 366.06, Florida Statutes] repose considerable discretion in the Commission in the ratemaking process.").

The step increase approved by the Commission to recognize the five CTs and the rail unloading facility is a prospective increase that could have been approved to take immediate effect rather than being deferred. The Commission has the power to approve prospective increases and routinely does so. The Commission's authority to approve prospective rate increases has been expressly recognized by the Florida Supreme Court. In Floridians United for Safe Energy, Inc. v. Public Service Commission, the Commission had granted Florida Power & Light ("FPL") a rate increase for 1984 and a subsequent rate increase in 1985. 475 So.2d 241 (Fla. 1985). Floridians United challenged the Commission's authority to grant the subsequent year increase based on the then newly created Section 366.076, Florida Statutes (addressing limited proceedings and rules on subsequent adjustments). The Supreme Court found that the

Commission had authority and had always had authority (even prior to the enactment of such Section 366.076) to grant subsequent year rate increases. The Court also stated:

> At the heart of this dispute is the authority of PSC to combat 'regulatory lag' by granting prospective rate increases which enable the utilities to earn a fair and reasonable return on their investments. We long ago recognized that rates are fixed for the future and that it is appropriate for PSC to recognize factors which affect future rates and to grant prospective rate increases based on these factor. (Id.), (citing Citizens of Florida v. Hawkins, 356 So.2d 254 (Fla. 1978); Gulf Power v. Bevis, 289 So.2d 401 (Fla. 1974); City of Miami, 208 So.2d 249).

The Court acknowledged the Commission's authority to approve prospective rate increases and affirmed the Commission's order which established prospective increases for FPL.

More recently, the Commission approved prospective rate increases in PEF's and FPL's 2005 rate case settlements. *See* Order No. PSC-05-0945-EI (approving an increase to base rates to recover the full revenue requirements of the installed costs of Hines Unit 4 and the unit's non-fuel operating expenses, starting on the commercial in-service date of Hines Unit 4); Order No. PSC-05-0902-S-EI (approving an increase to base rates reflected on customer bills for any power plant that is approved through the Power Plant Siting Act and that achieves commercial operation within the term of the Stipulation and Settlement, beginning on the commercial in-service date of the plant).

Intervenors should not be heard to argue against a step increase on procedural grounds. Indeed, OPC has argued in favor of step decreases in the past, citing as precedent step increases the Commission has approved. In re: Southern Bell, Order No. PSC-94-0046-PHO-TL issued in Docket No. 820260-TL and three other consolidated Southern Bell dockets, January 13, 1994. (94 FPSC 1:105)

The fact that Tampa Electric specifically requested annualization of the five CTs and the rail unloading facility over the lesser form of rate relief that the Commission ultimately adopted

in the form of a step increase does not remove the latter from the Commission's range of alternatives or create error in the Commission's selection of the step increase alternative. In virtually every rate decision, the Commission weighs competing evidence and uses its judgment to achieve a result within the range of alternatives supported by record evidence. The Commission's decision regarding the amortization of rate case expense is a good example. Tampa Electric's witness proposed amortizing rate case expense over a three year period. OPC's witness contended that was too short a period of time and recommended a five year amortization. The Commission ultimately approved a four year amortization. However, the fact that neither witness addressing the subject supported a four year amortization does not invalidate the judgment call the Commission made within the range of alternatives supported in the record. The same can be said with respect to returns on equity the Commission approves in rate cases and any number of other adjustments the Commission makes that are within the range of positions supported by the parties but not specifically stated in the position of any party.

The record of the proceeding includes testimony supportive of the step increase approved by the Commission as an alternative to the requested annualization. After considerable discussion of these alternatives, Tampa Electric's President Charles Black testified that to the extent these assets are recognized for ratemaking purposes at the time they are placed in service, the company would be agreeable to such treatment. (Tr. 178, lines 11-15). Tampa Electric witness Jeffrey Chronister testified in support of annualization of the five CTs and the rail unloading facility. He stated that if these projects are not included in base rates as proposed, or only in part, Tampa Electric would have to come back and ask for additional rate relief when the projects are placed into service, owing to the significant size of the company's investment in these projects. Witness Chronister pointed out that in lieu of conducting additional costly rate cases to address newly constructed facilities, the Commission has, as an alternative, the ability to

authorize a step increase coinciding with the facilities going into service after the conclusion of a base rate proceeding. (Tr. 1554, line 22 through Tr. 1555, line 11).

Indeed, Tampa Electric requested subsequent year adjustments for the five CTs and rail unloading facility as an alternative to annualization in its Brief and Post Hearing Statement of Issues and Positions ("Brief"). On page 27 of its Brief, Tampa Electric stated its firm belief that the five CTs being added in 2009 should be annualized and recovered through rates set at the conclusion of this proceeding. However, the company alternatively stated that should the Commission determine that one or more of the CTs should not be annualized, the Commission should recognize those new assets in a subsequent year adjustment to base revenues effective January 1, 2010. The company noted that this adjustment would afford it an opportunity to earn a fair return on this significant investment while avoiding the effort and expense of having an additional base rate proceeding to recover the significant costs attributable to the new CTs.

Similarly, on page 30 of its Brief, the company urged a subsequent year step increase effective January 1, 2010 to recognize the new rail unloading facility at Big Bend Station in the event the Commission did not approve the annualization the company had requested.

Contrary to Intervenors' Motion, there were no surprises and no lack of notice in connection with the step increase the Commission approved in this case. The step increase approved by the Commission constitutes significantly less relief than the company sought in its petition. Intervenors should not be heard to re-argue their points in opposition to annualization in an effort to undo the reduced base rate relief the Commission saw fit to authorize in the form of a step increase.

a. No Violation of Due Process Rights

Intervenors also contend that the Staff's revised recommendation to approve step increases recognizing the five CTs and rail unloading facility beginning January 1, 2010

deprived them of an opportunity to comment on the revision, thus denying them due process. There is nothing new about Staff revisions to recommendations, with those revisions often coming on the day of an Agenda Conference. At almost every Agenda Conference, oral or written modifications to Staff Recommendations are presented and approved. At the time post-hearing recommendations are submitted, the record in a proceeding is closed and Staff's input to the Commission via a Staff Recommendation is a component of the decision making process and not a continuation of debate with input from the parties.

This is not to say that parties are without an opportunity for legitimate input. Any party to a proceeding can address any perceived error, oversight or mistake in the decision making process by seeking reconsideration, which Intervenors have availed themselves of in this proceeding. There simply is no due process violation in not being allowed to respond to a Staff Recommendation or any revision to a Staff Recommendation.

Secondly, as discussed above, the step increase recommended by the Staff and approved by the Commission is in the nature of a lesser included component of the rate relief that would have been granted had the Commission approved the annualization sought by Tampa Electric which would have allowed the five CTs and rail unloading facility to be reflected in rates beginning in May of 2009, rather than deferring the rate effect to January 1, 2010. Any party to this proceeding knew from the outset that the rate impact of annualization, or any lesser relief the Commission saw fit to authorize, were potential outcomes, given the breadth of ratemaking discretion the Legislature has vested in the Commission. Intervenors' claims of surprise and lack of notice are without foundation and should be rejected.

b. No Violation of Chapter 120, Florida Statutes

Intervenors' Chapter 120 "point of entry" argument is no more than a weak variation of their general re-argument in opposition to any base rate recognition of the five CTs and rail

unloading facility. Moreover, this argument is based on a mischaracterization of the nature of the relief granted in the Order. The Commission did not authorize its Staff "to approve the step increase." Instead, the Order itself approves the step increase and only charges Staff with the ministerial duty to ensure that the clearly articulated conditions in the Order are met prior to implementation of the step increase.

c. No Inconsistency Between the Order and the Commission's Vote

Intervenors' contention that the Commission's Order differs from the vote at the Agenda Conference and, arguably, effects an unlawful delegation of authority to Staff is, yet again, a strained variation of the same re-argument contained in Intervenors' alleged Chapter 120 violation section of their Motion. The Order only authorizes the Staff to police Tampa Electric's compliance with the step increase conditions contained in the Order. If the conditions are not met, the Staff no doubt would inform the Commission which could then take whatever action it deems appropriate. Intervenors' resort to parsing the wording of the Order only demonstrates the difficulty they have encountered in trying to find anything the Commission has overlooked or failed to consider.

2. No Violation of Statutes or Commission Rules

a. No Violation of Used and Useful Requirement

Intervenors next argue that costs for ratemaking purposes must be current and not speculative in nature. Their argument in this regard ignores the fact that the costs associated with Tampa Electric's investment in the five CTs and the rail unloading facility are being incurred presently and will be fully incurred before the step increase becomes effective. Moreover, the specific conditions imposed in the Order as prerequisites to implementation of the step increase ensure that the cost the step increase is designed to recognize will be in service and not speculative.

Intervenors' argument on this point appears to be an assault against the use of projected test years and the Commission's judicially recognized authority, discussed at pages 4 and 5 of this response, to approve prospective rate increases. The key point Intervenors conveniently overlook is the fact that under the Commission's Order, the five CTs and the rail unloading facility must be completed and in service before Tampa Electric's customers begin paying for them. The Order includes adequate safeguards to insure that customers' interests are protected, and Intervenors fail to demonstrate anything the Commission has overlooked or failed to consider in providing for such rate relief and customer protection.

b. No Violation of Requirements Governing Conduct of Rate Cases

In this portion of their Motion, Intervenors attempt to fashion a rule violation argument out of Tampa Electric's request to utilize a projected test year ending December 31, 2009, and claim that the step increase approved by the Commission is, therefore, somehow precluded. Once again, Intervenors ignore the fact that Tampa Electric requested and justified annualization of the five CTs and rail unloading facility. In approving a step increase to recognize the addition of these assets once they are completed and in service, the Commission granted only a portion of the rate relief Tampa Electric sought – something the Commission was clearly entitled to do as discussed earlier.

Intervenors also contend that since no rules have been adopted implementing the limited proceeding statute, Section 366.076, Florida Statutes, the Commission is precluded from granting the prospective step increase under that statute without somehow violating the rulemaking provisions of Section 120, specifically, 120.54, Florida Statutes. Once again, Intervenors completely overlook the Commission's authority to approve prospective increases and the Supreme Court's determination in Floridians United for Safe Energy, Inc. v. Public

Service Commission, supra, that the Commission's authority to grant subsequent year increases has always existed, even prior to the enactment of Section 366.076, Florida Statutes.

3. ***The Proposed Step Increase will not Result in a Substantive Mismatch of Revenues and Sales.***

This point of Intervenors' Motion differs from a basic tenant Intervenors have argued in this proceeding that there must be a matching of investment and operating revenues and expenses. As OPC's witness Hugh Larkin stated:

> The end result in setting rates should be an appropriate matching of the period used for forecasting generally coinciding with the period in which rates would become effective, there would be a matching investment and operating revenues and expenses.

Tampa Electric still believes that its proposed annualization of the five CTs and the rail unloading facility would have effected a proper matching of investment and operating revenues and expenses consistent with what Intervenors have demanded. It is without question that the alternative relief authorized by the Commission in the form of a step increase meets Intervenors' matching of investment and operating revenues and expenses criterion. Recovery does not begin until after the assets are in service. The step increase will allow the company to earn a fair return on these significant investments after the assets are placed in service. As the Commission noted in its Order, the approved alternative will avoid significant cost to consumers and the significant length of time needed to conduct a limited rate proceeding. The record in the instant proceeding fully supports the appropriateness of Tampa Electric bringing on line the five CTs and rail unloading facility. The fact that this has already been demonstrated underscores the reasonableness of the Commission's approval of the step increase which avoids the time and expense of a duplicative new rate proceeding.

Intervenors have shifted their position on matching and now attempt to suggest some mismatch in sales and revenues stemming from the Commission's decision to defer any base rate increase for the five CTs and rail unloading facility to 2010. There is no mismatch and the Commission has overlooked nothing in deciding to defer the increase. The Commission could have approved the requested annualization in which case the increase would apply to 2009 sales. Since the increase was deferred to commence January 1, 2010, it is only appropriate that the increase apply to sales on and after that date.

Conclusion

For the foregoing reasons, the Commission should deny Intervenors' Motion for Reconsideration of Order No. 09-0283.

DATED this 22nd day of May 2009.

Respectfully submitted,

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Intervenors' Motion for Reconsideration, filed on behalf of Tampa Electric Company, has been furnished by U.S. Mail or hand delivery (*) on this 22nd of May 2009 to the following:

Keino Young/Martha Brown*
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Tampa Electric Company.	)	DOCKET NO. 080317-EI
	)	FILED: May 22, 2009

TAMPA ELECTRIC COMPANY'S CONDITIONAL REQUEST FOR ORAL ARGUMENT ON INTERVENORS' MOTION FOR RECONSIDERATION

Tampa Electric Company does not believe that oral argument is necessary relative to Intervenors' Motion for Reconsideration. However, if oral argument is scheduled, Tampa Electric requests an opportunity to participate and also requests that the length of time set for oral argument be the same for Intervenors collectively as it is for Tampa Electric. Each of the Intervenors is a cosignatory of the same Motion for Reconsideration and fundamental fairness requires that they divide amongst themselves the same amount of time Tampa Electric is allowed to respond to their Motion.

DATED this 22nd day of May, 2009.

Respectfully submitted,

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