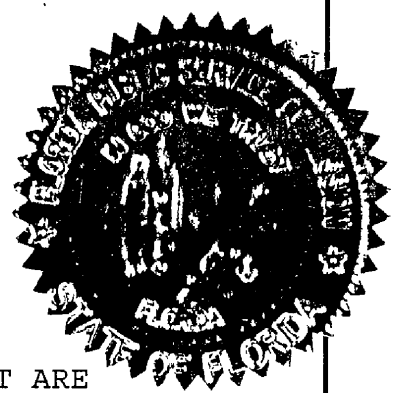


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040001-EI

In the Matter of:

FUEL AND PURCHASED POWER COST
RECOVERY CLAUSE WITH GENERATING
PERFORMANCE INCENTIVE FACTOR.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 12

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

DATE: March 30, 2004

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
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4 Electric Company.

5 R. WADE LITCHFIELD, ESQUIRE, Florida Power & Light
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7 appearing on behalf of Florida Power & Light Company.

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10 Florida Industrial Power Users Group.

11 ROB VANDIVER, ESQUIRE, Office of Public Counsel, c/o
12 The Florida Legislature, 111 W. Madison St., #812, Tallahassee,
13 Florida 32399-1400, appearing on behalf of Office of Public
14 Counsel.

15 COCHRAN KEATING, ESQUIRE, and JOE JENKINS, Florida
16 Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee,
17 Florida 32399-0850, on behalf of the Commission Staff.

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P R O C E E D I N G S

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2 CHAIRMAN BAEZ: And we are back on Item 12.

3 Mr. Keating, can you introduce the item?

4 MR. KEATING: Yes. Commissioners, Item 12 is staff's
5 recommendation concerning three post-hearing motions for
6 reconsideration, one being a motion for reconsideration, or in
7 the alternative, clarification. There has been a request for
8 oral argument with respect to Tampa Electric Company's motion
9 for reconsideration, which is addressed in Issue 2. Staff's
10 recommendation on that request is in Issue 1. Staff has
11 recommended approving Tampa Electric's request for oral
12 argument.

13 CHAIRMAN BAEZ: Commissioners, I guess we can take up
14 Issue 1, if you're ready, unless you have any questions on
15 that.

16 COMMISSIONER DEASON: Move staff's recommendation on
17 Issue 1.

18 COMMISSIONER BRADLEY: Just a minute. I see now.
19 Issue 1?

20 CHAIRMAN BAEZ: It's just oral argument? Are we all
21 right?

22 COMMISSIONER BRADLEY: Yes.

23 COMMISSIONER DAVIDSON: Second.

24 CHAIRMAN BAEZ: All right. Moved and seconded. All
25 those in favor say aye.

1 (Unanimous affirmative vote.)

2 CHAIRMAN BAEZ: Very well. We're going to entertain
3 oral argument on Tampa Electric's motion for reconsideration.

4 Mr. Willis, it's your motion.

5 MR. WILLIS: Thank you, Chairman.

6 Tampa Electric appreciates the opportunity to present
7 to you today the reasons that we believe that, respectfully,
8 you should reconsider your decision to offset Tampa Electric's
9 recoverable fuel expenses by \$8.3 million. We have asked that
10 you reconsider that decision, and we further have urged you not
11 to make matters worse by considering the petition for
12 reconsideration that was filed by OPC, FIPUG, and the Florida
13 Retail Federation, which would make matters worse by increasing
14 that adjustment to \$31.9 million.

15 We hope that you will firmly reject OPC's -- I'll
16 just call it intervenors -- petition, and specifically
17 recognize that the \$8.4 million adjustment, if it stands -- we
18 hope that you will reconsider it, and it doesn't, but if it
19 does stand that that was the total adjustment to be made for
20 all relevant time periods.

21 I think it is very important for you to understand
22 and remember the background under which these issues arose. In
23 1999 Tampa Electric undertook a massive one billion dollar
24 environmental clean-up program. The centerpiece of that
25 program was a \$700 million repowering of the Gannon coal-fired

1 station into the new Bayside natural gas burning station. In
2 the settlement we were required to shut down all coal-burning
3 activity at Gannon Station no later than December 31st, 2004.
4 I'm proud to report that Tampa Electric has completed its
5 repowering project successfully. It was completed on January
6 15th. It was on time and under budget, and it provides 1,800
7 megawatts of clean burning power at the old Gannon site. It's
8 600 megawatts more than the old Gannon Station.

9 Tampa Electric did cease its coal-fired operations at
10 Gannon Units 1 and 2 in April of last year. And Gannon Units 3
11 and 4 were shut down in October of 2003. And we feel that that
12 was a very good decision, and you agreed with that. But let me
13 digress. This shutdown gave rise to the issues that were tried
14 in the fuel hearing in November; that is, first of all, was the
15 shut down prudent. And you very forcefully, and we appreciate
16 your decision, that, yes, it was prudent. For safety, and
17 reliability, and environmental benefits, for the whole of the
18 circumstance it absolutely was the right thing to do to shut
19 those units down when we did.

20 The second issue was, well, what is the effect of
21 that shutdown. Well, the first effect was that it provided
22 dramatic environmental improvements in the Tampa Bay area. NOx
23 was reduced by 85 percent, SO2 was reduced by 89 percent, and
24 mercury emissions were reduced by 70 percent, a dramatic change
25 where Tampa Electric has emerged as one of the cleanest

1 utilities in the country as a result of this program. It
2 increased the capacity, as I mentioned. It increased the
3 reliability of the station by switching to natural gas in a new
4 facility.

5 But natural gas is more expensive than coal, and the
6 net effect of this event was that all things considered, our
7 purchased power and fuel costs were offset by \$8.4 million
8 because of some savings that were perceived. Now this is a
9 very significant amount to Tampa Electric.

10 Now, you called it an accounting offset. We felt, in
11 the context of everything that was presented, we felt it was
12 more like a penalty. But doing the right thing as efficiently
13 and as quickly as we could, and providing those benefits that I
14 have just mentioned.

15 Now, with respect to cost-recovery, I want to point
16 out that Tampa Electric has not asked that the \$700 million
17 capital investment be recovered either in the environmental
18 cost-recovery clause, and we have not to date asked for it to
19 be recovered in base rates, either. In fact, Tampa Electric
20 has absorbed the last two major power plants without an
21 increase in its base rates. But we did ask you to allow all of
22 the replacement fuel costs that were occasioned by this
23 shutdown, we felt in the whole context that that was fair.

24 So, our argument to you today is that considering the
25 entire context of this matter that you overlooked all of the

1 costs of shutting down the Gannon Station and all the many
2 costs of this settlement. Now, we believe that as a matter of
3 basic fairness that this adjustment shouldn't be made.

4 Now, before I go further I want to emphasize that we
5 do appreciate the fact that you specifically held that Tampa
6 Electric's decision to shut down the Gannon Units 1 through 4
7 when it did were prudent, and that the replacement fuel
8 associated with the shutdown were prudently incurred, we just
9 take issue with giving us a \$8.4 million adjustment in the
10 context of the extensive environmental benefits that I have
11 talked about, and the vast amount of other costs that were
12 involved that we're not being asked to be recovered.

13 With respect to OPC's -- I'll just say OPC's motion,
14 I know it is a joint motion with FIPUG and the others, but I
15 tend to say just OPC -- we completely agree with staff's
16 recommendation on that issue. We believe that you should
17 reject that proposal out of hand, that it exacerbates this
18 matter tremendously by expanding this adjustment from \$8.4
19 million all the up to \$31.9 million. They have not presented
20 any matter of law that you overlooked, and they have not
21 presented to you any matter that you didn't thoroughly
22 consider.

23 I don't believe that this Commission miscalculated or
24 misunderstood what you were doing. I think that you clearly
25 assumed that the total amount of the adjustment, if you are

1 going to make one, which I must say that we dispute, but for
2 the purposes of argument, if you are going to make an
3 adjustment, I think that you clearly intended that the total
4 amount of the adjustment for the relevant time period was to be
5 \$8.4 million.

6 As staff points out, the transcripts of your decision
7 are abundantly clear, that you developed a number that you felt
8 was about right under these circumstances. As I have noted, we
9 don't agree with that, but that is what I think that you did.
10 And that you had some discussions back and forth about how to
11 get to just about the right number.

12 So, in summary, we believe that the intervenors'
13 points are inconsistent with your vote at the agenda conference
14 that followed the fuel hearing. The fact that the Bayside
15 units are now operational providing additional capacity to the
16 company, all of the plans for the shutdown call for it to be
17 made before the end of this year and not -- there was never a
18 plan to run the units right down to the last minute.

19 It was inconsistent with OPC's Witness Majoros that
20 we never intended to run those units all the way to the end.
21 It is inconsistent with the finding that our shutdown was
22 prudent, the significant environmental benefits, and we also
23 contend that the savings are, in fact, nonexistent because we
24 increased expenses in other areas.

25 So, in conclusion, to expand this adjustment from

1 \$8.4 million to \$31.9 million would grossly penalize Tampa
2 Electric, and we believe would shock basic sensibilities and
3 would not be fundamentally fair. And so we urge you to fully
4 adopt staff's recommendation that the \$8.4 million offset was
5 the total adjustment to be made for all relevant time periods.

6 CHAIRMAN BAEZ: Thank you, Mr. Willis.

7 Mr. Vandiver, if you will just hold on a second, I
8 have a question of staff.

9 Mr. Keating, and, again, I just need to be
10 straightened out on this because I feel a sense of fairness
11 coming on. Mr. Willis did start discussing OPC's motion, which
12 under my understanding we weren't entertaining oral argument
13 on, but I'm going to let them argue their motion, since Mr.
14 Willis' -- are we okay with that?

15 MR. KEATING: There is nothing in the way this item
16 was noticed to suggest that participation would be limited.
17 Traditionally, it is limited to Commissioners and staff, but we
18 have in past practice allowed, at the Commission's discretion,
19 parties to conduct oral argument on motions for
20 reconsideration.

21 CHAIRMAN BAEZ: Commissioners, any objection to just
22 extending the oral argument to all the motions that we have
23 before us?

24 Mr. Litchfield, I see you sitting, do you have
25 comments to make on your motion, as well? And I'm not going to

1 take them up right now, I just want to know.

2 MR. LITCHFIELD: I'm only here to address Issue
3 Number 3.

4 CHAIRMAN BAEZ: So you do have comments to make?

5 MR. LITCHFIELD: Only to the extent to support
6 staff's recommendation. If there are no other questions, no, I
7 would have no comments.

8 CHAIRMAN BAEZ: You've been marvelously brief, and we
9 appreciate it. Thank you.

10 Mr. Vandiver, you go ahead, and understand that you
11 have full range of discussion here available to you.

12 COMMISSIONER BRADLEY: Mr. Chairman, I need for the
13 gentleman who supports staff's recommendation to identify
14 himself and who he represents.

15 CHAIRMAN BAEZ: Oh, I'm sorry. Mr. Litchfield, go
16 ahead and identify yourself for Commissioner Bradley.

17 MR. LITCHFIELD: Wade Litchfield for Florida Power
18 and Light.

19 CHAIRMAN BAEZ: He is on Issue 3.

20 MR. LITCHFIELD: It's Issue 4, actually.

21 COMMISSIONER JABER: Issue 4.

22 CHAIRMAN BAEZ: I apologize. Now that we have got
23 that straight, go ahead, Mr. Vandiver.

24 MR. VANDIVER: We would ask that Ms. Kaufman present
25 argument, if that is acceptable, and I will be available to

1 answer any questions the Commission may have.

2 CHAIRMAN BAEZ: Go ahead, Ms. Kaufman.

3 MS. KAUFMAN: Thank you, Mr. Chairman. Vicki Gordon
4 Kaufman, I'm here on behalf of the Florida Industrial Power
5 Users Group. We filed a joint response with Public Counsel and
6 the Florida Retail Federation, and our own joint motion for
7 reconsideration.

8 I won't belabor the standard for reconsideration,
9 because I know that we are all familiar with it, but it is
10 whether the Commission overlooked or failed to recognize an
11 important point of fact or law. I will address Mr. Willis'
12 comments first. We think that clearly the argument he has made
13 to you and the argument that was made in his pleading is just
14 reargument of what you heard at the hearing and what you
15 discussed during your deliberations.

16 Tampa Electric made a number of points in their
17 written pleading, but today Mr. Willis has emphasized to you
18 that you didn't consider all the facts, you didn't look at the
19 entire context. And to that point, I would remind you that we
20 had several witnesses from Tampa Electric, we had witnesses
21 from the Florida Industrial Power Users Group, we had a witness
22 from Public Counsel. All the facts were before you. And when
23 you deliberated on this matter for, it was several hours that
24 day in November, you thoroughly took into account all the facts
25 and circumstances of this case.

1 And that being said, you made the decision that you
2 did to offset the increased replacement fuel costs that were
3 visited upon the ratepayers due to the Gannon early shutdown.
4 You made that in light of all the facts that have now been --
5 were presented then and reiterated to you now.

6 And the bottom line of your decision is that the
7 company shut down the Gannon coal burning units early, and that
8 action resulted in O&M savings for the company and increased
9 replacement fuel costs for the customers. Because as Mr.
10 Willis told you, we know that natural gas is more expensive
11 than coal.

12 Now, Mr. Willis calls this a penalty. However, if
13 you look at your order, you will see that you addressed that.
14 And you noted that it was a way for the ratepayers to share in
15 the savings the company received, and that it was well within
16 your statutory authority to do so. So we agree with your Staff
17 when they say at Page 7 of the recommendation, that the
18 Commission acted fully within its statutory authority when it
19 ordered Tampa Electric's recoverable fuel costs to be offset by
20 O&M savings resulting from the same finite decision which led
21 to replacement fuel costs. You clearly linked those two
22 actions. And in your discussion, as well as in the order, you
23 wanted to tie those two things together.

24 And I would direct you to Page 21 of your order where
25 you discuss this, and then it is memorialized in your order,

1 and I call it the but for test. You said that but for Tampa
2 Electric's decision to cease operations at Gannon Units
3 1 through 4 when it did, the company would not have incurred
4 the replacement fuel costs that we have deemed reasonable.
5 Further, but for that same decision, the company would not have
6 achieved O&M savings. So you linked those two things, and you
7 found that an offset was fair. And then you directed a
8 sharing of that savings on an 80/20 basis.

9 Tampa Electric talks about the fairness and the
10 equity of the situation, and they cite in their pleading the
11 GTE case, which most of you recall is a surcharge telephone
12 case, and they use that case for the principle that fairness
13 and equity works both ways as to the ratepayers and as to the
14 utility. And we have no quarrel with that principle.

15 We would say to you, though, that you made the right
16 decision, and without allowing TECO to at least share a part of
17 its O&M savings, it would be the ratepayers that would be
18 getting the short end of the equity stick, if you will. And in
19 this case, even though the ratepayers are bearing 100 percent
20 of the replacement costs, still they are receiving only 80
21 percent of the savings.

22 Also, your staff points out to you, you discussed in
23 your deliberations, this is just the converse of the situation
24 that you see frequently in the fuel adjustment case where base
25 rate items are passed through the fuel adjustment clause when

1 there is a fuel savings. The GTE case tells you to look at the
2 reciprocal situation, which is what you have here, when you are
3 judging fairness.

4 The bottom line, Commissioners, we think you applied
5 the correct regulatory philosophy. We don't think that Tampa
6 Electric has pointed out to you anything that you have
7 overlooked or failed to consider. We think that their motion
8 for reconsideration should be denied.

9 Our motion makes a very simple point, that is as I
10 have already mentioned, when we listened to your discussion and
11 then when we read the transcript, it seemed to us you linked
12 the early shut down, which was a voluntary action that Tampa
13 Electric took, you linked that to the increased fuel costs.
14 You used the but for test that I have already described.

15 As I said, we think that was the right approach. We
16 think the error that was made was that you addressed the
17 savings only for 2003. We know, as Mr. Willis told you, the
18 plants were shut down in 2003; they didn't run at all in 2004.
19 And so not only were there O&M savings and increased
20 replacement costs in 2003, there was a similar scenario in
21 2004.

22 Again, there was a lot of discussion on this issue, a
23 lot of motions made, a lot of discussion of the language, it
24 seemed to us that you were tying that December 31, 2004,
25 shutdown date with the savings and the costs. It's true you

1 told your staff to look at MJM-5, and I have some additional
2 copies if you need them, but MJM-5, even though it was a Public
3 Counsel exhibit, it was a document prepared by Tampa Electric
4 that illustrated the savings only for 2003.

5 We think you need to look at 2004 as well. And you
6 can do that by looking at MJM-8. Again, a Tampa Electric
7 prepared document that reflects the savings for 2004 when you
8 apply the same methodology that you used for 2003. That is
9 what we did, and we took MJM-8, and we calculated the savings.
10 I believe it is \$29.4 million. When you share that as you have
11 already directed, the savings is 23.5. And when you add that
12 to 8.4, that is how you get \$31.9 million which reflects the
13 same methodology that you used for '03 for '04, and we think
14 this correctly reflects the amount that ought to be flowed back
15 to ratepayers who are bearing 100 percent of the increased
16 replacement fuel cost. So we would ask you to reconsider that
17 portion of your motion, and to apply the same philosophy for
18 '03 that you applied for '04. Thank you.

19 CHAIRMAN BAEZ: Commissioners, questions? I have one
20 real quick, just to throw out -- oh, go ahead, Commissioner
21 Bradley.

22 COMMISSIONER BRADLEY: No, go ahead.

23 CHAIRMAN BAEZ: Really quickly, Ms. Kaufman. Is the
24 number of additional fuel costs, the number that we were
25 considering, is it your position that it extended through the

1 end of '04, as well?

2 MS. KAUFMAN: Yes. Because the coal units were shut
3 down for all of '04, and replacement fuel is required.

4 CHAIRMAN BAEZ: Okay.

5 COMMISSIONER BRADLEY: Are we through considering
6 arguments as it relates to reconsideration? If so, I have a
7 proposal that I would like to put out.

8 CHAIRMAN BAEZ: Go ahead. I think the parties have
9 all had their say at this point. So whatever questions or
10 comments you may have, Commissioner.

11 COMMISSIONER BRADLEY: Okay. And I don't know how to
12 get this into the framework of what we are doing here today,
13 but I think it is quite appropriate, and I just want to put it
14 out there for the parties to consider. Noteworthy is that air
15 quality is a serious problem in Tampa Bay. And I am referring
16 specifically to nitrogen oxide. Also noteworthy is that there
17 is a bill before the legislature to help improve air quality in
18 the State of Florida.

19 And what I want to ask the Commission as well as
20 staff, and I want staff to respond to a couple of questions,
21 and the first question is this: Is there a possibility of
22 using approximately \$10 million of O&M savings to improve air
23 quality in Tampa Bay? That's my first question.

24 And, specifically, I know that we are in the process
25 of giving reconsideration to our previous order, but what I

1 want to put out there is the compromise position that does not
2 deal with all the issues, but somewhat moves us away from where
3 -- moves us away from our initial decision. Of the
4 approximately \$10 million at issue, what my proposal would do
5 is this: I would propose that we use one-fourth as the refund
6 to the ratepayers, which would be equivalent to the equivalent
7 amount of \$2.5 million, one-fourth to be retained by TECO,
8 which is 2.5 million, and the remaining 5 million to be used to
9 improve the air quality in Tampa Bay.

10 But before I make my motion, I need to ask staff this
11 question: A \$5 million investment towards improving air
12 quality, would that make a meaningful difference?

13 MR. JENKINS: Commissioner, no, it would not. Tampa
14 Electric still has an NOx problem at its Big Bend plant, and it
15 would probably cost somewhere in the neighborhood of 100
16 million to put a selective catalytic reduction, much like a
17 catalytic converter on your automobile, on the plant. So it
18 would be a drop in the bucket, so to speak.

19 COMMISSIONER BRADLEY: Well, would at least a drop in
20 the bucket be a beginning?

21 MR. JENKINS: Everything is a beginning, yes, sir.

22 COMMISSIONER BRADLEY: Okay. And I need for the
23 parties to respond. And if we agree to use the 5 million in
24 additional monies to reduce the emissions, what I would also
25 propose is that we develop some conceptual plan that would

1 earmark those dollars, that would make TECO accountable for the
2 use of those dollars. I'm just putting that out there as maybe
3 an alternative discussion or a recommendation.

4 COMMISSIONER DAVIDSON: Commissioner, if I may, I
5 think that is a great idea to have dollars spent on air quality
6 issues. When this issue initially came up, it was my intent
7 that the \$8.4 million adjustment was the total adjustment to be
8 made, that it didn't sort of extend beyond a period of time,
9 and there was no, sort of, tying it to 2004 and 2005. I mean,
10 we debated this, and I recall specifically this issue. And
11 when I voted, it was that 8.4 million was the adjustment.

12 I like this idea of using an additional amount for
13 air clean-up, and I'm wondering if -- how we would get to that
14 point while also reflecting at least what was my intent, if
15 perhaps, even though it may be a drop in the bucket, the
16 company could support and would voluntarily agree to what
17 Commissioner Bradley was suggesting that \$5 million of this
18 additional amount be spent for air clean-up. I'm trying to
19 flesh this out so that at some point we could get to an actual
20 motion.

21 COMMISSIONER BRADLEY: Well, I put my proposal out
22 there just as a beginning point of our discussion. Maybe as a
23 beginning point to maybe solving a problem that two parties
24 disagree about, and to have an alternative out there. And by
25 no means do I disagree with anything that you have said.

1 COMMISSIONER DAVIDSON: I mean, my concern is I don't
2 want to sort of be in a posture of ordering, so to speak,
3 certain provisions, whether in this case it be costs, a sharing
4 of savings, or another provision, and then sort of send a
5 signal that, well, we are always going to, sort of, reopen what
6 I intended to be a final decision on that.

7 But, again, I think this idea of allocating some of
8 these savings to good policies and programs is a good one, and
9 I wonder if there is a vehicle, a way to get there that would
10 sort of not grant the motions for reconsideration, but would
11 perhaps get to the end point of what Commissioner Bradley is
12 suggesting.

13 Because just as a matter of law and fact, I don't
14 think there is a basis for the granting of the motions for
15 reconsideration. I think staff got it right, as it pertains to
16 Issues 2 and 3. I understand the parties aren't there, so I'm
17 wondering if there is a vehicle to get to that additional, sort
18 of focus on air quality in Tampa while not sort of revisiting
19 our prior orders, which in my view are correct.

20 COMMISSIONER BRADLEY: I don't disagree with anything
21 you said.

22 MR. WILLIS: Commissioner Davidson, let me make just
23 a couple of observations. First of all, the project that we
24 undertook and the billion dollar program that Tampa Electric
25 undertook has dramatically improved the air quality in Tampa

1 Bay from the Gannon site and the entire area. I mean, the
2 reductions that we are talking about are dramatic. They are
3 85, 89 percent for NOx and SOx (phonetic), they are 70 percent
4 for mercury. That is a wonderful result, and it cost the
5 company a lot of money to do that, which we have not asked to
6 be recovered to date either in the environmental cost-recovery
7 clause or in base rates.

8 To add onto that, I mean, we feel like that we have
9 already approached this issue and done it in a fair way, and a
10 way that settled differences with the EPA and DEP. And I think
11 you are absolutely right that the issue before you today is
12 whether or not these petitions for reconsideration should be
13 granted. And I think that you should remain true to what you
14 have indicated was your intent when you voted to make this
15 adjustment, that the \$8.4 million seemed about right for this
16 situation. And I think if you are going to make an adjustment,
17 which we don't believe that any adjustment should be made under
18 the circumstances, then that amount is what you should stick
19 with.

20 COMMISSIONER DAVIDSON: Well, I agree. But I also
21 agree with Commissioner Bradley that if we can get some type of
22 even additional sort of commitment, even though as we have
23 heard it may be a drop in the bucket, I think every drop in the
24 bucket adds up to a drop of, you know, cleaner air. That if we
25 could come up with a solution that could get us there while

1 sustaining our orders, but perhaps even a commitment by the
2 company, well, you know, we will certainly increase our program
3 by X amount. And I don't know that is something you could make
4 today, I don't know, but I support Commissioner Bradley's idea.

5 MR. WILLIS: We support his idea in the sense of
6 reducing and improving air quality. But we are obligated under
7 the further provisions of our settlement to do additional
8 clean-up at Big Bend Station, and there are significant dollars
9 involved. And we are committed through those settlement
10 agreements to do that.

11 What I would urge you to do today is to get this
12 issue off the table, to confirm your decision, if that is what
13 it would be, and then to look at -- I mean, I think we have got
14 your message that you want further improvements down there and
15 we are committed to do that, but not to go further and try to
16 allocate some additional money to specific projects as a result
17 of this hearing. I think we have your message loud and clear,
18 though.

19 CHAIRMAN BAEZ: Mr. Vandiver, you had a response?

20 MR. VANDIVER: Yes, sir. I would say that we
21 certainly admire Commissioner Bradley's motive, and I think it
22 is a great intent. I think our office certainly supports the
23 environmental idea of cleaning up the air in Tampa Bay.

24 I think from a legal standpoint that this record is
25 closed, and that the record support for doing this on this

1 particular record is simply lacking. And that Tampa Electric,
2 of course, does have an environmental cost-recovery clause that
3 perhaps something of this nature could be recovered through.

4 And that is my first thought, of course, just being
5 hit with this, that this particular pot of money on this record
6 I don't believe is appropriate. And that is not to say that
7 this isn't a very creative idea, and I really admire the motive
8 and the idea, and perhaps had this been presented to us earlier
9 when the record was open, that perhaps we could have creatively
10 come together on this record and been more creative.

11 But at this stage, this very late stage of this
12 proceeding, I feel very constrained to respond more creatively
13 here at oral argument on reconsideration because it is a
14 wonderful motive. And our office does support efforts to clean
15 up the environment and clean up the air in Tampa Bay. And I
16 know that you being a native from down there speak from the
17 heart, and I think it is a great idea. But on this particular
18 record with this particular pot of money, I think there are
19 problems logistically getting there, sir. And being hit with
20 it and not having more time to think about it, I think that is
21 kind of where we are on this record, sir.

22 CHAIRMAN BAEZ: Ms. Kaufman, you had something to
23 say, and then I think Commissioner Deason had some comments, as
24 well.

25 MS. KAUFMAN: I would just echo Mr. Vandiver. We are

1 here on reconsideration. And we appreciate Mr. Bradley's
2 motives, but we think that the legal standard is clear, the
3 record is closed. It is what it is. And I'm not sure that at
4 this point in the process it would be appropriate.

5 CHAIRMAN BAEZ: Thank you. Commissioner Deason.

6 COMMISSIONER DEASON: Well, I guess my thoughts have
7 already been expressed to some extent. You know, while I
8 recognize the motive is sincere and the goal is laudable, I'm
9 concerned that we not stray from outside the constraints placed
10 upon us for reconsideration.

11 The record is closed. And as we all know, the
12 standard for reconsideration is quite clear. And, you know, I
13 would be uncomfortable changing our decision, unless there is a
14 finding that we have erred in some manner. And so I'm more
15 comfortable staying within the traditional constraints of
16 reconsideration.

17 CHAIRMAN BAEZ: And I would agree with you,
18 Commissioner, but I do have a question just for clarity sake.
19 The idea of -- well, first of all, Commissioner Bradley, I
20 think it is important to lay out there that environmental
21 goals, and the people have to think creatively about how to
22 address, and certainly in that area, what environmental
23 interests ought to be addressed. I think the way you broke it
24 down mathematically were essentially what we are considering is
25 playing with a refund, we're playing with the customers' money.

1 And while I don't have in principle an objection to saying, you
2 know what, I think rather than putting money in the customers'
3 pocket on a one-time thing, let's make an investment, or a
4 contribution that has a longer view. A gift that keeps giving,
5 if you will. So I think that that is the way we need to be
6 thinking, and I would urge the companies to take that back with
7 them.

8 I think at this part, because of the cases the way
9 that they are postured at this point, and as Commissioner
10 Deason said, it seems to me that we are, in essence, playing
11 with the customers' money after we have already created an
12 interest in this refund on their behalf. And I think what you
13 might have heard Public Counsel, again, creatively addressing
14 is that somehow a decision has already been made that has
15 created these expectations.

16 And I guess maybe when we were making the decision we
17 could have gone -- and I guess that was going to be my question
18 to staff. At the point at which we decide on a sharing
19 mechanism, at a point in which we decide what the disposition
20 of any offset benefits might have been, would we have been
21 within our authority to actually have thought about a more
22 creative disposition at the time, or is that something that, as
23 I think Public Counsel has implied, had to also be in the
24 record, the possible alternatives for our disposition of those
25 funds?

1 MR. KEATING: Well, as you probably recall in your
2 deliberations, to come up with the 80/20 split there was some
3 discussion about whether there was record support for even
4 creating that split between ratepayers and shareholders here.
5 It might be going a step further where you have got an
6 additional split without some record support to explain why
7 that would be appropriate.

8 CHAIRMAN BAEZ: Well, is the only assumption that any
9 appropriate treatment of -- that the only appropriate treatment
10 of when you are going to flow back benefits is a refund, a
11 straight refund? I mean, is that essentially the case, is the
12 only alternative that is available to us? I guess the question
13 that I'm having trouble with is the notion that if we are, if
14 it is our authority to say, and, again, based on the record,
15 there ought to be an offset, there ought to be benefits that
16 are shared with the customers, that we also do not have some
17 kind of authority as to how that benefit is disposed.

18 And, again, let me be clear. I'm not talking about
19 in this instance, because I think we have gone a step, we are a
20 little bit past that for this point. But for future reference,
21 do we have that kind of authority. I mean, as I recall, I
22 think an 80/20 split may have even been some kind of consensus
23 rather than -- I'm sure there was record evidence, I have no
24 doubt about that, but I guess my point being that there was a
25 fair amount of leeway as to what that number ultimately was.

1 MR. KEATING: I think in the record before you you
2 had record evidence that supported no offset and record
3 evidence that supported an offset. You had a range of
4 0 to 100 of what could be offset. But nobody had proposed --
5 while there was a proposal of an offset, nobody had proposed
6 this additional matter. And I don't want to give you an
7 opinion off the cuff, given the situation cold. I don't want
8 to give you an opinion that you wouldn't want to use for future
9 proceeding, that would bind you in the future, because I know
10 you asked for something to guide you in the future.

11 CHAIRMAN BAEZ: It's food for thought in this sense
12 to me. I mean, yes, there was record evidence for an offset in
13 whatever proportions may have been deemed appropriate. I don't
14 think that -- I don't think that Commissioner Bradley's
15 suggestion, had we really thought about it in time, changes the
16 nature of that necessarily. The fact that you say, all right,
17 there is an offset, there is 80 percent and 20 percent sharing,
18 now what we do with that 80 percent I guess my question,
19 because I really am unclear as to what our options are when and
20 if the time ever comes again, what our ability to deal with
21 that is.

22 I'm sorry, Commissioner Deason, were you waving me
23 down?

24 COMMISSIONER DEASON: No. At some point, I just need
25 to make a comment.

1 CHAIRMAN BAEZ: Okay.

2 COMMISSIONER BRADLEY: Mr. Chairman, let me clear up
3 something. What I put out there before the Commission was not
4 a recommendation, but purely some points of discussion.

5 CHAIRMAN BAEZ: I understand that. I think we've got
6 a whole lot of discussion.

7 COMMISSIONER BRADLEY: By no means have I made a
8 motion.

9 CHAIRMAN BAEZ: No, no. I didn't hear you say motion
10 at all.

11 COMMISSIONER BRADLEY: Okay.

12 COMMISSIONER DEASON: At this point, let me just
13 state this: I believe that the Commission's jurisdiction and
14 discretion is quite broad when it comes to ratemaking
15 decisions. Obviously they have to abide by the law and they
16 have to be fair and reasonable, but I think we have a great
17 deal of discretion.

18 We had a record in front of us, as counsel indicated.
19 I think the Commission, when we were deliberating, we were
20 trying to come up with an equitable solution that we felt was
21 fair to all involved, and we had quite a bit of record evidence
22 concerning the timing of the decision to close these plants,
23 why they were done. We had economic analysis as well as
24 engineering analysis concerning that. I think we made a
25 decision that the timing was prudent, but we were concerned

1 about the equity of it all and how ratepayers were being
2 treated in the process, and we wanted to make sure that
3 ratepayers were treated fairly as well.

4 The Commission historically has had the ability, and
5 we have used that to come up with imaginative ways to create
6 equity. And the 80/20 split, I think, was that. We have used
7 that in other contexts and other proceedings. And I think the
8 Commission has the discretion, if the proposal had been made at
9 the time we were deliberating about setting aside a certain
10 amount to be earmarked for certain types of environmental
11 improvements, I think that probably would have been within our
12 discretion for consideration at the time. I'm just not
13 comfortable in doing in the context of a reconsideration.

14 So my comments earlier should not be interpreted that
15 we do not have the discretion to consider these type of equity
16 decisions. The Commission has historically made decisions
17 other than cash refunds. In the water and wastewater industry
18 we routinely make adjustments to CIAC. I know in the electric
19 industry we have made adjustments to depreciation reserves, we
20 have offset regulatory assets that have been created because of
21 timing differences. So there are a variety of mechanisms at
22 our disposal, and I think that we can be creative and be
23 responsive. I'm just uncomfortable doing it in the context of
24 reconsideration at this point.

25 CHAIRMAN BAEZ: Point taken. Commissioner Davidson.

1 COMMISSIONER DAVIDSON: And I understand Commissioner
2 Deason's sentiments. And I like this idea a lot, I think it
3 actually is a bit more creative than we were. To use your
4 term it encourages -- what was it, a gift that keeps on giving,
5 as opposed to just an outright cash refund. And my question
6 for staff, either for Mr. Keating or Mr. Melson, is is there a
7 way within our discretion in the posture of this case to sort
8 of revisit the 80/20 structure to perhaps get to what
9 Commissioner Bradley is suggesting? And I just -- my question
10 really goes to the authority to do that. Because I support the
11 idea. And if there is a way that we could get there within our
12 authority, and then someone -- we could get a clear motion
13 articulated that wouldn't cause us to reconsider the essence of
14 our decision, but perhaps go into more specifics on the
15 allocation, I could support that.

16 MR. MELSON: Commissioner, I think it is very
17 difficult at this stage in the proceeding to try to do that.
18 Even if you were not reconsidering the amount, the disposition
19 of those dollars, as I understand it, the way the issues really
20 were teed up in the case is how many dollars should be
21 recovered from customers through the fuel clause. And your
22 decision to offset the amount that was recovered by the 8.4
23 million was an exercise of your discretion taking into account
24 how you might account for some O&M savings.

25 To the best of my knowledge, there was not any

1 evidence in the record that would have supported using dollars
2 for anything other than flowing them back to customers through
3 the fuel clause. And while I agree that, you know, I think you
4 would have had more discretion at the time the decision was
5 being made, I am concerned that without some record evidence
6 that some other use of those dollars was appropriate that that
7 would be a more difficult decision to defend on appeal, even if
8 you had done it at the time. I don't want to sit here today
9 and say you can or you can't, but with the kind of record you
10 had, it likely would have been a stretch to do something out of
11 the box.

12 COMMISSIONER DAVIDSON: Well, I think in view of all
13 the discussion, I'm going to make a motion to move staff on
14 Issues 2 and 3.

15 COMMISSIONER JABER: Commissioner Davidson, may I
16 just put in a comment before we act on your motion, if you
17 don't mind?

18 CHAIRMAN BAEZ: Go ahead, Commissioner Jaber.

19 COMMISSIONER JABER: I want to agree with the
20 Commissioners that Commissioner Bradley's motion or idea, your
21 discussion piece is certainly laudable. And I have to tell
22 you, Commissioner Bradley, had we had the company or the
23 parties come forward when we were deliberating initially, that
24 that is an idea I would have whole-heartedly supported.

25 I think what we shouldn't underestimate today with

1 your discussion piece is that the parties should be encouraged
2 to use that kind of creativity. We have sort of gotten on the
3 subject of what the Commission has jurisdiction over and how
4 much discretion the PSC does have, but I think that you don't
5 even reach that discussion if the company and parties would
6 have come forward that day and said let us work on a creative
7 idea where it is a win/win situation for the customers and the
8 company.

9 So I really want to congratulate you on that, and
10 further encourage companies, and consumer groups, and the like
11 to take your idea as a way to move forward for the years to
12 come to be this creative. Because, frankly, if we would have
13 had that idea from the parties, we wouldn't be talking about
14 how much discretion the PSC has or doesn't have.

15 The other thing I wanted to tell you that concerns me
16 about the proposal as it relates to today is the perception
17 that it may have, and the legislature with the bill pending,
18 you made reference to that earlier. While I think our
19 intentions would be good, I would hate for someone to perceive
20 that we are circumventing the pending bill somehow.

21 With that I would support Commissioner Davidson's
22 motion and would encourage parties in the future to take this
23 as guidance. Because this is where we need to be. We need to
24 be thinking out of the box and creating win/win situations for
25 all Floridians, companies included.

1 And, finally, for the record, I agree with
2 Commissioner Davidson that \$8.4 million was always the total
3 adjustment from my standpoint. And I never intended, nor do I
4 today intend to send a signal that it is a penalty to the
5 company. In fact, I think we took great pains to congratulate
6 the company for their quick reaction in shutting down those
7 units and their quick compliance with the DEP and EPA
8 requirements. And I continue to congratulate the company in
9 that regard. And I would second Commissioner Davidson's
10 motion.

11 COMMISSIONER BRADLEY: Mr. Chairman, before we accept
12 the second, let me be clear about my comments and my proposal.
13 By no means am I attempting to circumvent the Legislature. But
14 specifically --

15 COMMISSIONER DAVIDSON: We have no doubt about that.

16 COMMISSIONER BRADLEY: But, specifically, my concern
17 comes purely from my experiences in the past, and, as I said,
18 my concern about the reduction or the improvement of the air
19 quality in the Tampa Bay area. And that is an issue that is
20 important and it is a major health initiative or issue. But
21 with that I will accept the motion and I will second the
22 second.

23 CHAIRMAN BAEZ: Great. There is a motion, and a
24 second, and a third on Issues 2 and 3. All those in favor say
25 aye.

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(Unanimous affirmative vote.)

CHAIRMAN BAEZ: Show it approved unanimously.

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 5th day of April, 2004.

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JANE FAUROT, RPR

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