

AUSLEY & MCMULLEN

ORIGINAL

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

November 12, 1997

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company;
FPSC Docket No. 970171-EU

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of each of the following:

1. Tampa Electric Company's Response to Motion for Reconsideration filed on Behalf of Office of Public Counsel and the Florida Industrial Power Users Group.
2. Tampa Electric Company's Conditional Request for Oral Argument.

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

ACK _____ Thank you for your assistance in connection with this matter.

AFA 3

ADDI _____

CAF _____

CMU _____

CTR _____

EAJ 1

JDB/pp
Enclosures

Sincerely,


James D. Beasley

ELI 1

EP 5

cc: All Parties of Record (w/encls.)

Motion
DOCUMENT NUMBER-DATE

11607 NOV 12 5

FPSC-RECORDS/REPORTING

Request
DOCUMENT NUMBER-DATE

11608 NOV 12 5

FPSC-RECORDS/REPORTING

PAID _____

SEC 1

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate)	
cost allocation and regulatory)	DOCKET NO. 970171-EU
treatment of total revenues associated)	FILED: November 12, 1997
with wholesale sales to Florida)	
Municipal Power Agency and City of)	
Lakeland by Tampa Electric Company.)	

TAMPA ELECTRIC COMPANY'S RESPONSE TO MOTION FOR RECONSIDERATION FILED ON BEHALF OF OFFICE OF PUBLIC COUNSEL AND THE FLORIDA INDUSTRIAL POWER USERS GROUP

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Fla. Admin. Code Rule 25-22.060, responds as follows to the Motion for Reconsideration of Order No. PSC-97-1273-FOF-EU ("Order No. 97-1273") filed on behalf of Office of Public Counsel ("OPC") and the Florida Industrial Power Users Group ("FIPUG"):

1. OPC and FIPUG's Motion should be rejected on a summary basis since its content provides an insufficient basis for Commission reconsideration of the underlying order. It is well established that the permissible subject matter of a petition for reconsideration is limited to the identification of errors of law made by the trial court or administrative agency or pointing out material facts contained in the record which the trier of fact overlooked or failed to consider when it rendered its order in the first instance. Diamond Cab Company v. King, 146 So.2d 889 (Fla. 1962). As the court observed in Diamond Cab Company, reconsideration is not to be used as an opportunity to reargue points previously argued and considered, simply because the losing party disagrees with the judgment or order.

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FPSC-RECORDS/REPORTING

2. In the instant case the Commission did not overlook or fail to consider any of the points raised in OPC's and FIPUG's Motion for Reconsideration. Instead, the Commission's final order and the 82 page transcript of the Agenda Conference discussion preceding the order demonstrate that the Commission very carefully considered every aspect of the issues presented as well as the implications of its unanimous decision. As explained below, the Joint Motion simply reargues issues that have been considered and decided.

3. OPC and FIPUG's primary assertion of legal error appears to be that this Commission lacks the legal authority to direct that operating revenue be used to cover any shortfall between the system incremental cost credited to the fuel clause in connection with the FMPA and Lakeland wholesale sales and the fuel revenue actually received pursuant to those agreements. However, OPC and FIPUG fail to cite any legal authority for their assertion. Instead, they simply assert that the language of Tampa Electric's March 25, 1996 stipulation¹ ("the First Stipulation") and its subsequent September 25, 1996 stipulation² ("the Second Stipulation") somehow prohibit the use of operating revenue to cover fuel revenue shortfalls under

¹ Stipulation between Tampa Electric, OPC and FIPUG, executed on March 25, 1996, and approved in Order No. 96-0670-S-EI, issued May 20, 1996 in Docket No. 950379-EI.

² Stipulation between Tampa Electric, OPC and FIPUG, executed on September 25, 1996 and approved in Order No. PSC-96-1300-S-EI, issued October 24, 1996 in Docket No. 960409-EI.

the FMPA and Lakeland contracts³. As discussed below, the language of the First and Second Stipulations has no bearing on the Commission's legal authority in this matter. The Commission has always determined where the benefits and burdens associated with various transactions should reside, whether those transactions were wholesale sales, broker sales, recoverable or nonrecoverable fuel items or fuel, environmental, or conservation cost recovery clauses.

4. OPC and FIPUG first assert that Paragraph 11 of the First Stipulation acts as a bar to the Commission action complained of in the instant petition. However, they do not suggest that this language demonstrates that the Commission has committed a legal error in Order No. 97-1273. OPC and FIPUG don't even specify what language in Paragraph 11 supports their contention or how that unidentified language should be interpreted. Instead, they simply characterize the Commission's order as permitting an "artificial reduction" in calculated earnings in contravention of both the First and the Second Stipulations.

5. Paragraph 11 of the First Stipulation reads as follows:

The calculation of the actual ROE for each calendar year shall be on an "FPSC adjusted basis" using the appropriate adjustment approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made.

³ It should be noted that the record in this proceeding is replete with evidence that no such shortfall is likely to occur and devoid of evidence to the contrary, unless one counts OPC and FIPUG's unsubstantiated assertions as competent evidence.

The language requiring the use of adjustments approved in Tampa Electric's last rate proceeding, Docket No. 920324-EI, certainly does not support OPC and FIPUG's contentions. The fuel adjustment standard in effect when the Stipulations were approved was to credit actual fuel revenues attributable to separated off-system sales as opposed to system average fuel cost. Any difference between fuel cost and fuel revenue was charged to retail customers through the fuel clause. The fuel treatment ordered by the Commission in Order No. PSC-97-1273-FOF-EU is even more favorable to ratepayers than the treatment in effect when the Stipulations were approved.

6. If, instead, OPC and FIPUG are claiming that the Commission's order with regard to the fuel treatment of the FMPA and Lakeland constitutes a proforma or annualized adjustment, prohibited under Paragraph 11, then they have truly missed the mark. Where historic test periods are used for ratemaking purposes, there are often adjustments for known and imminent changes that would affect future revenues and expenses. See United Telephone v. Mayo, 345 So.2d 648 (Fla. 1977). These adjustments are called annualizing or proforma adjustments. An annualizing adjustment is for an event that occurred during the test year but is annualized as if it occurred for all months in the test year. A proforma adjustment adjusts for an imminent change which has not yet occurred but will occur in the future. See In re: Southern Bell, 12 PUR 4th 252 at 258-259, In re: Southern Bell, 21 PUR 4th 451 at 457-458 and In re: Florida Power Corp., 138 PUR 4th 472 at 478.

7. In this proceeding the Commission has neither proposed an adjustment for a change which has not yet occurred nor proposed to artificially adjust Tampa Electric's results of operations to include costs or revenues which have not actually been incurred or received. Instead, the Commission has simply ordered a fair regulatory treatment of the fuel costs and revenues associated with the FMPA and Lakeland sales. Rather than making what OPC and FIPUG characterize as an "artificial reduction in calculated earnings," the Commission in Order No. 971273 very deliberately approved a fuel adjustment treatment for the FMPA and Lakeland sales that is consistent with the policies addressed in the Commission's March 11, 1997 fuel adjustment order.⁴ There is no proforma adjustment or annualization involved.

8. OPC and FIPUG's reliance on the Second Stipulation as support for their contentions is especially puzzling. In their Motion, they point to no particular language in the Second Stipulation which supports their apparent assertion of legal error on the Commission's part. The Second Stipulation only addressed the treatment of capital and O & M costs and revenues. The treatment of fuel costs and revenues was specifically included by Tampa Electric in earlier drafts of the Second stipulation. However, the question of fuel treatment was ultimately excluded from the final draft at the behest of OPC and others, with the understanding that the Commission would address this issue

⁴Order No. PSC-97-0262-FOF-EI issued March 11, 1997 in Docket No. 970001-EI.

generically in a separate proceeding, independent of the Stipulation (Agenda Conference Tr. 6). As noted above, the fuel treatment issue was, in fact, addressed by the Commission in its March 11, 1997 order in the fuel adjustment proceeding. It is, therefore, impossible to understand how the Second Stipulation could be at all germane to the Commission's decision on the fuel treatment to be afforded the FMPA and Lakeland sales.

9. Since the issue of fuel treatment was divorced from the Stipulations and relegated to a separate proceeding, the Commission's Order No. PSC-97-1273-FOF-EU did not modify the Stipulations. Instead, the Commission's order in this proceeding is entirely consistent with its March 11th order where the fuel treatment for wholesale sales was addressed on a generic basis. As the Commission explains in Order No. 97-1273 at page 7, the March 11 fuel adjustment order allows for a deviation from system average fuel cost accounting for these types of wholesale transactions where there are overall benefits to the utility's retail ratepayers. The Commission went on to observe that separation of capital and O & M costs associated with the FMPA and Lakeland sales will be beneficial to customers and increase the potential for refunds under the stipulation. During the Agenda Conference discussion of this matter, the Commission and Staff were in agreement that the benefits to retail customers from shifting all of the costs of the FMPA and Lakeland sales out of the retail jurisdiction were even greater than the benefits of the regulatory treatment Tampa Electric had proposed. (Agenda Conference Tr. 80)

Therefore, the Commission concluded that the sales would provide overall benefits to Tampa Electric's retail ratepayers as described in the March 11 fuel adjustment order. Accordingly, the Commission authorized Tampa Electric to credit its fuel clause with an amount equal to the system incremental fuel cost resulting from the FMPA and Lakeland sales.

10. OPC's and FIPUG's Motion for Reconsideration really appears to be a belated and misguided attack on the fuel adjustment treatment provided for in that order. OPC and FIPUG reargue the position they urged during the hearing that Tampa Electric should credit through the fuel clause system average fuel costs associated with the Lakeland and FMPA sales rather than the system incremental fuel cost. This issue was carefully considered and squarely decided by the Commission. Nothing was overlooked or misapprehended. As the Commission observed in its final order, crediting system incremental fuel cost will ensure that Tampa Electric's fuel cost recovery clause will be made whole. The effect on the fuel adjustment will be a "wash," in the sense that retail customers will see no difference in their fuel adjustment factors with or without the FMPA and Lakeland sales.

11. OPC's and FIPUG's reargument concerning the effect of the foregone gain on economy sales remains inaccurate as well. The record makes it clear that the estimated foregone broker sales gain was factored into the company's cost benefit analysis and is reflected in the company's incremental fuel cost projection. (Tr. 378, line 13 - Tr. 380, line 3)

WHEREFORE, Tampa Electric Company urges the Commission to deny
OPC's and FIPUG's Joint Motion for Reconsideration.

DATED this 12th day of November, 1997.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
KENNETH R. HART
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

HARRY W. LONG, JR.
TECO Energy, Inc.
Post Office Box 111
Tampa, Florida 33601-0111

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand deliver (*) on this 12th day of November, 1997 to the following:

Ms. Leslie Paugh*
Staff Counsel
Division of Legal Services
Florida Public Service
Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Gary Lawrence
City of Lakeland
501 East Lemon Street
Lakeland, FL 33801-5079

Ms. Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Mr. John W. McWhirter
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas
Post Office Box 3350
Tampa, FL 33601

Mr. Robert Williams
FMPA
7201 Lake Ellinor Drive
Orlando, FL 32809

Mr. John Roger Howe
Office of Public Counsel
c/o The Florida Legislature
111 West Madison St., Room 812
Tallahassee, FL 32399-1400



ATTORNEY