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November 13, 2001

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

Re: Docket No.: 010001-EI

Dear Ms. Bayo:

On behalf of The Florida Industrial Power Users Group (FIPUG), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Florida Industrial Power Users Group's Response to Tampa Electric Company's Motion for Reconsideration of a Portion of Order No. PSC-01-2176-PCO-EI.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copy to me. Thank you for your assistance.

Sincerely,



Timothy J. Perry

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_ TJP/bae  
COM 5 Enclosure  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG \_\_\_\_\_  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC \_\_\_\_\_  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER - DATE  
14372 NOV 13 2001  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and purchased power  
cost recovery clause and  
generating performance incentive  
factor.

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Docket No. 010001-EI

Filed: November 13, 2001

**FLORIDA INDUSTRIAL POWER USERS GROUP'S  
RESPONSE TO TAMPA ELECTRIC COMPANY'S MOTION FOR  
RECONSIDERATION OF A PORTION OF ORDER NO. PSC-01-2176-PCO-EI**

Pursuant to Rule 25-22.0376, Florida Administrative Code, the Florida Industrial Power Users Group ("FIPUG") files its Response to Tampa Electric Company's ("TECo") Motion for Reconsideration of a Portion of Order No. PSC-01-2176-PCO-EI. FIPUG asserts that this Commission should deny TECo's motion.

1. On November 8, 2001, TECo filed its Motion for Reconsideration of a Portion of Order No. PSC-01-2176-PCO-EI. TECo requests that this Commission reconsider that portion of the Order requiring TECo to disclose the names of suppliers of energy purchased by TECo in the wholesale market.

2. The standard for reconsideration of a Commission order is well known: whether the motion identifies a point of fact or law which was overlooked or which the commission failed to consider when rendering its order. *Diamond Cab Co. of Miami v. King*, 146 So. 2d 889 (Fla. 1962); *Stewart Bonded Warehouse, Inc. v. Beavis*, 294 So. 2d 315 (Fla. 1974); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). It is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (1st DCA 1958).

3. In its Motion, TECo attempts to reargue that the names of suppliers of energy purchased in the wholesale market is similar in nature to the information addressed in TECo's July 12, 2001 Motion for Protective Order. It is plainly obvious from the Commission's Order that the Prehearing Officer considered exactly this point and rejected TECo's assertion:

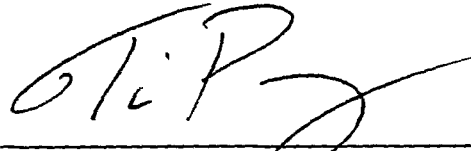
Although TECO asserts that the information sought in [Interrogatory No. 28] is sensitive pricing information "very similar in nature" to the information that was the subject of its July 12, 2001, motion for protective order, only the portion of the interrogatory which seeks average cost data for purchases made during interruptions appears to be similar. TECO offers no explanation of how disclosure of the amounts of energy purchased and the names of the suppliers of that energy - information not concerning pricing or cost to TECO - would harm its competitive interests or qualify as trade secrets.

*See Order No. PSC-01-2176-PCO-EI* at 5. Applying the legal standard set forth above, TECo's motion must fail.

4. Additionally, TECo argues that the information is of the same "type" as that information previously held to be confidential. Belying TECO's claim of confidentiality is the fact that TECo has previously provided — without asserting a claim of confidentiality — information detailing power purchases by supplier and MWH in response to FIPUG's Interrogatory Nos. 11(d) and 51.

5. Further, a review of the Order demonstrates that the Prehearing Officer did consider and dismiss the possibility of potential harm from the disclosure of the requested information. Prehearing Officer Jaber correctly concluded that the information is not confidential and TECo has shown no error in her decision. Having considered the matter when ruling on TECo's Motion, the above stated legal standard dictates that this Commission deny TECo's Motion for Reconsideration.

**WHEREFORE**, TECo's Motion for Reconsideration of a Portion of Order No. PSC-01-2176-PCO-EI should be denied and it should be required to respond immediately to FIPUG's discovery.



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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing FIPUG's Response to Tampa Electric Company's Motion for Reconsideration of a Portion of Order No. PSC-01-2176-PCO-EI has been furnished by (\*) hand delivery, or U.S. Mail this 13th day of November, 2001, to the following:

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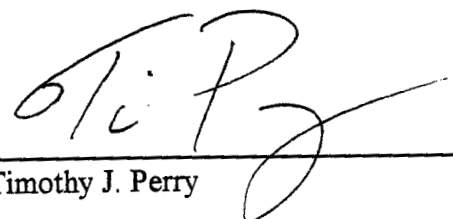
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