

ORIGINAL

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1834 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

February 18, 2004

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.: 031033-EL**

RECEIVED
FEB 18 PM 4:16
COMMISSION
CLERK

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:

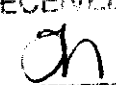
- ▶ The Florida Industrial Power Users Group's Motion to Strike Tampa Electric Company's "Rebuttal Comments."

Also enclosed for filing and distribution is the original and 1 copy of the following:

- ▶ Notice of Service of the Florida Industrial Power Users Group's Second Request for Production of Documents to Tampa Electric Company (No. 24)

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

AUS _____
 CAF _____
 CMP _____
 COM 5 _____
 CTR _____
 ECR _____
 GCL _____
 OPC _____
 MMS _____
 SEC 1 _____
 OTH _____

RECEIVED & FILED

 FPSC-BUREAU OF RECORDS

Sincerely,



Timothy J. Perry

DOCUMENT NUMBER-DATE

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

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECo Transport and associated benchmark.

Docket No.: 031033-EI
Filed: February 18, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO STRIKE TAMPA ELECTRIC COMPANY'S "REBUTTAL COMMENTS"**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, moves this Commission for an order striking Tampa Electric Company's (TECo) "Rebuttal Comments" Concerning FIPUG's Response in Opposition to Tampa Electric's Request for Confidential Classification (Reply). As grounds therefore, FIPUG states:

On January 26, 2004, TECo filed several Requests for Confidential Classification for documents it filed with the Commission. On February 9, 2004, FIPUG filed a Response in Opposition to TECo's Requests for Confidential Classification (Response in Opposition). TECo replied to FIPUG's response on February 13, 2004. Though TECo labels its pleading "Rebuttal Comments," that does not change the fact that it is an impermissible reply which is not appropriate under the Commission's rules and procedures.

The Commission has ruled many times that a reply to a response is not permitted. For example, in *In re: Request for arbitration concerning complaint of AT&T Communications of the Southern States, LLC, Teleport Communications Group, Inc., and TCG South Florida for enforcement of interconnection agreements with BellSouth Telecommunications, Inc.*, Order No. PSC-03-0525-FOF-TP, Docket No. 020919-TP (Apr. 2003), the Commission noted that:

. . . AT&T's Response to BellSouth's response is an inappropriate pleading. As noted by BellSouth, in previous cases where a party has filed a pleading not contemplated by our rules or the uniform rules, we have not considered the pleading. Specifically, in the *Supra* case, we found that "...neither the Uniform Rules nor our rules contemplate a reply to a response to a Motion." We find that

DOCUMENT NUMBER-DATE

02350 FEB 18 04

AT&T's response is such a pleading. Thus, we shall not consider the arguments raised in AT&T's Response to BellSouth's response.

In In re: Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc. for violation of the Telecommunications Act of 1996; petition for resolution of disputes as to implementation and interpretation of interconnection, resale and collocation agreements; and petition for emergency relief, Order No. PSC-00-1777-PCO-TP, Docket No. 980119-TP (Sept. 2000), the Commission struck a reply to a response to a motion for reconsideration. The Commission held:

We agree . . . that neither the Uniform Rules nor our rules contemplate a reply to a response to a Motion. Therefore, the Motion to Strike is granted.

See also, In re: Petition by ITCDeltaCom Communications, Inc. d/b/a ITCDeltaCom for arbitration of certain unresolved issues in interconnection negotiations between ITCDeltaCom and BellSouth Telecommunications, Inc., Order No. PSC-00-2233-FOF-TP, Docket No. 99-0750-TP (Nov. 2000) ("the Uniform Rules and Commission rules do not provide for a Reply to a Response to a Motion for Reconsideration. Upon consideration, I find it reasonable to deny BellSouth's Motion for Leave to File a Reply Memorandum"); *In re: Complaint of South Florida Hospital and Healthcare Association, et al. against Florida Power & Light Company, request for expeditious relief, and request for interim rate procedures with rates subject to bond; In re: Review of Florida Power & Light Company's proposed merger with Entergy Corporation, the formation of a Florida transmission company ("Florida Transco"), and their effect on FPL's retail rates*, Order No. PSC-01-1930-PCO-EI, Docket Nos. 010944-EI, 001148-EI (Sept. 2001) ("Consistent with the Uniform Rules of Procedure and Commission precedent, we strike and refuse to consider SFHHA's answer to FPL's response to SFHHA's request for clarification/reconsideration").

TECo's Rebuttal Comments are an unauthorized reply to FIPUG's Response in Opposition and, therefore, should be stricken.

WHEREFORE, the Commission should enter an order striking TECo's "Rebuttal Comments."



John W. McWhirter
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Telecopier: (813) 221-1854
jmcwhirter@mac-law.com

Vicki Gordon Kaufman
Timothy J. Perry
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman, & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 (telephone)
(850) 222-5606 (fax)
vkaufman@mac-law.com
tperry@mac-law.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's to Motion to Strike Tampa Electric Company's "Rebuttal Comments" has been furnished by (*) hand delivery, or U.S. Mail this 18th day of February 2004, to the following:

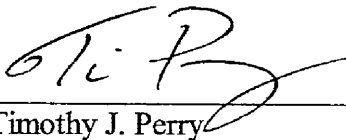
(*) Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

(*) Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

Rob Vandiver
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

R. Sheffel Wright
Landers & Parsons
301 West College Avenue
Tallahassee, Florida 32301

Mike Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256



Timothy J. Perry