

BEFORE THE 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  
ORDER NO. PSC-04-0251-PCO-EI  
ISSUED: March 8, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
LILA A. JABER  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Background

By Order No. PSC-03-1359-PCO-EI, issued December 1, 2003, in Docket No. 030001-EI, In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor ("fuel docket"), this Commission deferred consideration of issues related to the prudence of Tampa Electric Company's ("Tampa Electric") procurement of waterborne coal transportation services from the fuel docket to a separate proceeding. That order memorialized our vote taken at our November 3, 2003, Agenda Conference. This docket was opened to conduct the separate proceeding.

By Order No. PSC-03-1398-PCO-EI ("Order Establishing Procedure"), issued December 11, 2003, in this docket, the Prehearing Officer established procedural guidelines and a hearing schedule for this proceeding. By that order, the hearing for this proceeding was scheduled for April 13-14, 2004.

On December 22, 2003, the Office of Public Counsel ("OPC") and Florida Industrial Power Users Group ("FIPUG") filed a joint motion to reschedule the hearing to May 26-27, 2004. Also on December 22, 2003, Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly A. Diaz ("Residential Customers"), filed their notice of joinder in OPC and FIPUG's joint motion, adopting the arguments raised therein. On December 29, 2003, Tampa Electric filed a response in opposition to OPC and FIPUG's joint motion.

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By Order No. PSC-04-0048-PCO-EI ("Order 04-0048"), issued January 16, 2004, the Prehearing Officer denied OPC and FIPUG's joint motion. On January 26, 2004, the Residential Customers filed a motion for reconsideration of this order and a request for oral argument. On January 28, 2004, Tampa Electric filed a response in opposition to the motion for reconsideration and a response in opposition to the request for oral argument. This order addresses the Residential Customers' motion for reconsideration and request for oral argument. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

#### Request for Oral Argument

In their request for oral argument, the Residential Customers assert that oral argument from the parties on the motion for reconsideration will aid us in reaching a final determination of the issues. In its response in opposition, Tampa Electric states that oral argument is not necessary or appropriate in order for this Commission to fully consider and dispose of the Residential Customers' motion for reconsideration.

Rule 25-22.0376, Florida Administrative Code, provides that we may grant, at our discretion, a request for oral argument on a motion for reconsideration of a non-final order, such as Order 04-0048. We have traditionally granted oral argument upon a finding that oral argument would aid us in our understanding and disposition of the underlying motion. We find that the arguments put forth by the Residential Customers in their motion for reconsideration, together with the arguments put forth by Tampa Electric in its response, present an issue that is simple to comprehend and resolve, therefore oral argument would not assist us. Thus, we deny the Residential Customers' request for oral argument.

#### Motion for Reconsideration

The standard of review for a motion for reconsideration of a Prehearing Officer's order is whether the motion identifies a point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering the order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex.rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Steward Bonded Warehouse, Inc. v. Bevis.

In their motion for reconsideration, the Residential Customers contend that the Prehearing Officer, in rendering Order 04-0048, made a mistake of fact by finding that the moving parties, i.e., OPC, FIPUG, and the Residential Customers, were not prejudiced by the

scheduling of the hearing in this docket on April 13-14, 2004. The Residential Customers assert that while in retrospect it may have been better practice for the moving parties to have filed affidavits describing the extent to which they would be prejudiced, those parties made sufficient assertions in their pleadings to support the allegations that their ability to prepare for hearing was prejudiced due to the scheduled hearing dates.

In its response, Tampa Electric contends that the Residential Customers have not identified any point of fact or law overlooked by the Prehearing Officer in rendering Order 04-0048. Rather, Tampa Electric argues, the Residential Customers are simply rearguing the matters asserted in OPC and FIPUG's original joint motion and the Residential Customers' notice of joinder in that motion.

We find that the Residential Customers' motion for reconsideration fails to identify any point of fact or law that the Prehearing Officer overlooked or failed to consider in rendering Order 04-0048. Clearly, as set forth in the following excerpt from the order, the Prehearing Officer considered and rejected the arguments of OPC, FIPUG, and the Residential Customers concerning any prejudice to their ability to prepare for hearing pursuant to the scheduled hearing dates:

Other than noting that a hearing scheduled for May 26-27 will allow additional time to prepare for hearing, none of the parties seeking new hearing dates has alleged with any specificity how the current hearing dates will prejudice their ability to effectively prepare for hearing. Recognizing that Tampa Electric's direct case on these issues was first presented in testimony filed September 25, 2003, in the fuel docket, parties will have had ample time - almost six and a half months - to retain experts, conduct discovery, prepare testimony, and take other steps necessary to prepare for hearing under the current schedule. The Order Establishing Procedure allows parties to conduct several rounds of discovery prior to the current hearing dates by requiring that discovery responses be provided within 15 days of service of the request, half the time required by the Florida Rules of Civil Procedure. Further, while the current hearing dates are six weeks earlier than the tentative hearing dates identified prior to issuance of the Order Establishing Procedure, intervenor testimony is due only three and a half weeks earlier than it would have been under the tentative schedule shown in the December 1, 2003, CASR. No party has explained why an additional six weeks is necessary.

In the motion for reconsideration, the Residential Customers' simply state their disagreement with the Prehearing Officer's findings. As noted above, it is not appropriate in a motion for reconsideration to reargue matters that have already been considered.

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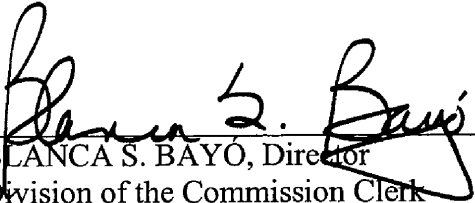
Based on the foregoing, we deny the Residential Customers' motion for reconsideration of Order 04-0048.<sup>1</sup>

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Residential Customers' motion for reconsideration of Order No. PSC-04-0048-PCO-EI and associated request for oral argument on that motion are denied. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 8th day of March, 2004.

  
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BLANCA S. BAYO, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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<sup>1</sup> We note that on February 23, 2004 – after the date of our vote on this motion for reconsideration - the Prehearing Officer issued Order No. PSC-04-0195-PCO-EI, granting a separate motion for continuance filed by OPC. Pursuant to that order, the hearing is now scheduled for May 27-28, 2004.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.