BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of Need for a Proposed Electrical Power Plant and Related Facilities in Polk County by Tampa Electric Company.	DOCKET NO. 910883-EI ORDER NO. PSC-92-0552-FOF-EI ISSUED: 06/23/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
BETTY EASLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

In Order No. PSC-92-0002-FOF-EI, issued March 2, 1992, we addressed numerous issues relating to Tampa Electric Company's (TECO) petition to determine the need for a proposed 220 MW Integrated Coal Gasification Combined Cycle electric generating unit. The unit is to be located in Polk County and it is to be funded in part by a grant from the United States Department of Energy. Among the issues we considered were several concerning the conservation measures ". . . taken by or reasonably available to the applicant which might mitigate the need for the proposed power plant. . . " Section 403.519, Florida Statutes. We determined that TECO had adequately considered the conservation measures, consistent with its Commission-approved conservation plans, that would be reasonably available to mitigate the need for the particular plant that TECO proposed. We concluded that additional cost effective conservation measures could not reliably defer the need for this plant within the 1995 time frame for which the additional capacity was needed.

On March 17, 1992, FRG timely filed a motion for reconsideration. Tampa Electric Company responded in opposition to the motion on March 25, 1992. We considered the motion at our June 2, 1992 Agenda Conference. This order memorializes our decision to deny FRG's motion.

We decline to reconsider our decision in this need determination, because FRG has not shown us any material factual or legal basis that we did not previously consider that would require a different decision in this case. FRG's motion alleges that "the PSC failed to consider matters of fact and law . . . and such failure impaired the correctness of the order". The "matters of fact and law" FRG contends we failed to consider concern the form

of the final order and the form of the Commission's responses to FRG's proposed findings of fact. FRG requests that we modify the responses to some of the proposed findings, and specifically distinguish findings of fact from conclusions of law in the body of the order. FRG does not contend that we failed to consider any substantive matters in our decision, and FRG requests no change in the substantive findings or decisions of the order.

The purpose of a motion for reconsideration is to bring to the attention of the Commission some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. See Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. DCA 1981). It is not an appropriate avenue for rehashing matters which were already considered, or for raising immaterial matters which even if adopted would not materially change the outcome of the case.

FRG's objections to the final order do not contain a single material point of fact or law that we overlooked or failed to consider in this case, let alone one that would in any way alter the substantive decisions we made. All of FRG's objections are insubstantial criticisms either of the technical form of the order or of the responses to FRG's proposed findings of fact. Even if we agreed to make the technical changes FRG demands, it would change nothing.

As to the technical objections themselves, FRG's contentions are simply form over substance arguments. Sections 120.58(1)(e) and 120.59(1), Florida Statutes require that final agency orders contain findings of fact and conclusions of law sufficient to inform the parties and the reviewing court of the bases on which the decision was made. They do not require labeling. Order PSC-92-0002-FOF-EI does contain extensive factual findings and legal reasoning to support the decision the Commission made, and to inform the parties and the courts of the grounds for that decision. As TECO points out in its response to the motion, a reviewing court is well able to distinguish factual findings from legal conclusions, and will not overturn an agency order because they are just not labelled as such.

Our responses to FRG's proposed findings of fact more than adequately satisfy the standards of the Administrative Procedures Act. It is not that the responses are inadequate. It is just that FRG is unhappy with the substantive nature of the responses. FRG has simply failed to allege any material ground on which to reconsider our order in this case. It is therefore,

ORDERED that, for the reasons stated above, Floridians for Responsible Utility Growth's Motion for Reconsideration is denied. It is further,

ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this 23rd day of June, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

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MCB:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 sewer utility by filing a notice of appeal with the Director, Division of

Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.