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February 8, 1999

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: Petition by Tampa Electric Company for Approval of Cost Recovery for a new Environmental Program, the Big Bend Units 1 and 2 Flue Gas Desulfurization System: FPSC Docket No. 980693-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to Office of Public Counsel's Motion for Reconsideration and the Joinder Therein by the Florida Industrial Power Users Group.

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

Thank you for your assistance in connection with this matter.

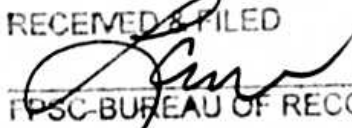
Sincerely,


James D. Beasley

JDB/pp
Enclosures

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

- ACK _____
- AFA 5
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- CAF _____
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RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
01626 FEB-89
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric)
 Company for Approval of Cost Recovery)
 for a new Environmental Program, the)
 Big Bend Units 1 and 2 Flue Gas)
 Desulfurization System.)

DOCKET NO. 980693-EI
 FILED: February 8, 1998

**TAMPA ELECTRIC COMPANY'S RESPONSE TO OFFICE OF
 PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION AND THE
 JOINDER THEREIN BY 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 in opposition to the Motion for Reconsideration filed in this proceeding on January 26, 1999 on behalf of the Office of Public Counsel ("OPC") and the joinder therein submitted on behalf of the Florida Industrial Power Users Group ("FIPUG"):

1. OPC's Motion for Reconsideration argues essentially two points. First, OPC reiterates its earlier failed argument that Tampa Electric should have proceeded under Section 366.825, Florida Statutes, rather than Section 366.8255. Secondly, OPC challenges the adequacy of the record insofar as Tampa Electric's fuel price forecasting is concerned. Both of these points have been argued at length by OPC, have been fully considered by the Commission in this proceeding and have been properly rejected in the Commission's final order in this proceeding.¹

2. The purpose of a petition for rehearing or reconsideration is merely to bring to the attention of the trier of fact some point which it overlooked or failed to consider when it rendered

¹ Order No. PSC-99-0075-FOF-EI, issued on January 11, 1999 in Docket No. 980693-EI ("Order No. 99-0075").

DOCUMENT NUMBER-DATE

01626 FEB-89

FPSC-RECORDS/REPORTING

its order in the first instance. Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962). Motions for reconsideration are not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the judgment or the order. Id. at page 3. Both of the points raised in OPC's Motion for Reconsideration were carefully considered by the Commission during the course of this proceeding. OPC's Motion for Reconsideration represents an erroneous attempt to reargue OPC's earlier positions and should be rejected by the Commission under the Diamond Cab precedent.

OPC'S Section 366.825 Argument Once Again Should be Rejected

3. OPC's Section 366.825 argument had its origin in FIPUG's July 23, 1998 Motion to Dismiss and the suggestion for dismissal filed on behalf of OPC on July 29, 1998. The Legal Environmental Assistance Foundation ("LEAF") later intervened and moved to dismiss adopting the background and arguments presented by FIPUG and OPC.

4. In a very detailed 11-page Order Denying Motions to Dismiss² the Commission squarely rejected the intervenors' contention that Tampa Electric should have proceeded under Section 366.825, Florida Statutes. In so doing the Commission observed that Tampa Electric's petition stated with sufficient clarity the elements necessary for relief under Section 366.8255, Florida Statutes. The Commission also expressly rejected OPC's argument that Section 366.825, Florida Statutes, requires a utility to seek preconstruction prudence review before seeking cost recovery under Section 366.8255, Florida Statutes. The Commission correctly reasoned that a filing under one of these statutes has no bearing upon a filing under the other and that the Legislature contemplated individual Clean Air Act Amendment ("CAAA") compliance activities being addressed under Section 366.0855, Florida Statutes. The Commission's rejection of OPC's

² Order No. PSC-98-1260-PCO-EI issued in Docket No. 980693-EI on September 22, 1998.

and FIPUG's choice of law argument was reaffirmed in the Commission's final order, as it should be once again.

5. OPC's Motion for Reconsideration, at paragraph 8 on page 4, erroneously states that Order No. 99-0075 grants prior approval of Tampa Electric's compliance plan. The same erroneous argument appeared in FIPUG's October 12, 1998 motion to reopen the record in this proceeding. Tampa Electric has never contended and the Commission has never concluded that the company's FGD project constitutes a comprehensive compliance plan. In denying FIPUG's earlier motion to reopen the record in this proceeding the Commission correctly characterized FIPUG's motion as an attempt to "back into" the same argument set forth in its motion to dismiss, i.e., that Tampa Electric would have to seek compliance plan approval prior to seeking relief under Section 366.8255, Florida Statutes. In so doing, the Commission stated:

In this docket, TECO appropriately filed for prudence determination and eligibility for future cost recovery of its proposed Flue Gas Desulfurization (FGD) system under Section 366.8255, Florida Statutes. Therefore, a 'comprehensive plan' as intimated in FIPUG's Motion to Reopen the Record is not required or contemplated under Section 366.8255, Florida Statutes. This issue has already been rejected by the Commission and need not be revisited here. (Order No. 99-0075, at p. 4)

OPC's and FIPUG's redoubled efforts to "back into" their Section 366.825 argument should be rejected.

6. OPC cites Christo v. State Dept. of Banking & Finance, 649 So.2d 318, 321 (Fla. 1st DCA 1995) for the proposition that "a more specific statute covering a particular subject is controlling over a statutory provision covering the same subject in more general terms." OPC's attempt to characterize Section 366.825 as a more specific statute than Section 366.0255 is erroneous. Section 366.825 authorizes but does not require public utilities to submit, for Commission approval, CAAA compliance plans. If Tampa Electric had petitioned for approval

of an overall compliance plan under Section 366.8255, OPC's rule of statutory construction might have some applicability. However, the company did not seek approval of a compliance plan. Instead, the company petitioned for, and the Commission approved, environmental cost recovery for a specific environmental compliance activity. That is the subject matter specifically governed by Section 366.8255. OPC's statutory construction argument has no relevance.

7. The appropriateness of the Commission's decision in this docket is borne out in prior Commission precedent. In implementing Section 366.8255, the Commission has approved CAAA compliance projects, both from a prudence and cost perspective, which were not preapproved as part of CAAA compliance plan under Section 366.825, Florida Statutes.³

8. In reviewing administrative interpretations of regulatory statutes or rules, the Supreme Court of Florida has stated that such interpretations are entitled to great weight, and will not be overturned by the courts unless they are clearly erroneous. Pan American World Airways v. Florida Public Service Commission, 427 So.2d 716, 719 (Fla. 1983). The approval granted in the instant case is fully consistent with prior Commission interpretations of Section 366.8255 in its earlier ECRC decisions.

OPC's "Adequacy of Fuel Price Forecast" Argument Should Likewise be Rejected

9. OPC's contentions regarding the adequacy of evidence relating to fuel price forecasts, likewise, represent reargument of matters set forth in the posthearing briefs of OPC and FIPUG and fully considered by the Commission in Order No. 99-0075. Such reargument should, likewise, be rejected under the Diamond Cab standard.

³ Order No. PSC-93-1580-FOF-EI issued October 29, 1993 in Docket No. 930661-EI, In re: Petition for Recovery of Environmental Compliance Costs by Florida Power & Light Company; Order No. PSC-96-1048-FOF-EI issued August 14, 1996 in Docket No. 960688-EI, Re: Tampa Electric Company.

10. OPC's argument must fail on the merits as well. First of all, OPC should be barred from raising any issue regarding the adequacy of evidence to support the conclusion that the FGD project is the most cost-effective compliance alternative available. In its Prehearing Statement, with respect to Issue 5, OPC affirmatively agreed that Tampa Electric had demonstrated that its proposed FGD project was the most cost-effective compliance option available (Prehearing Statement of OPC, Issue 5, page 3). Certainly this conclusion must have taken into account the reasonableness of Tampa Electric's fuel price forecast. It is patently unfair for OPC to agree that the proposed project is the most cost-effective compliance alternative available and then later contend that one element supporting that conclusion (the reasonableness of forecasted fuel prices) is somehow deficient. If, as OPC states on page 5 of its Motion, the viability of the FGD option was wholly dependent upon fuel savings, OPC has conceded the fuel savings issue by conceding the FGD project is the most cost-effective alternative available. OPC can't have one conclusion without the other.

11. The Commission certainly was entitled to rely on the expert opinions of Tampa Electric witnesses C. R. Black and T. L. Hernandez as to the reasonableness of the forecasted fuel prices used by the company in evaluating the cost-effectiveness of the FGD system. As the Supreme Court of Florida has recognized, expert opinion testimony, in and of itself, can provide evidentiary support for ratemaking decisions by this Commission. International Minerals and Chemical Corporation v. Mayo, 336 So.2d 548, 552 (Fla. 1976).

12. Order No. 99-0075 identifies a number of the fuel forecasting resources Tampa Electric relied upon in its evaluation of fuel prices and notes that none of the parties to this proceeding even question the validity or reliability of the sources used by Tampa Electric in its analysis of fuel prices. (Order No. 99-0075, pages 11-12). As the Commission observed, Tampa

Electric's fuel price assumptions were supported by company experts who testified that Tampa Electric used the same forecast in evaluating the cost-effectiveness of the FGD system that it used in its 1998 Ten Year Site Plan ("TYSP"). (Order No. 99-0075, at page 12). The Order goes on to state that the Commission has consistently determined these filings to be reasonable for planning purposes. Certainly the Commission is not precluded from officially noticing its own prior approval of a TYSP filing that was based on the same fuel price forecast the company relied upon in this proceeding.

13. OPC's Motion attempts to set up a post-decisional mine field of OPC imposed forecasting standards that would preclude this Commission from relying on virtually any fuel price forecast.

14. OPC's Motion, at paragraph 12, quibbles over the Commission's use of the terms "explicitly" and "implicitly" in describing record evidence contained in the hearing Exhibit 14, which includes certain late-filed deposition exhibits sponsored by Tampa Electric's witness Hernandez. OPC's contention is one of semantics and does not lessen the Commission's conclusion that Exhibit 14 contains adequate fuel forecast information going out over a 27 year planning horizon. This evidence was explicit and unchallenged. All of this information was made available to the intervenors, including confidential information for those intervenors executing non-disclosure agreements. However, the intervenors in this proceeding made a conscious decision not to review or consider this data, and cannot now to be heard to deny that it exists. Tampa Electric has presented substantial un rebutted evidence establishing that its FGD project is the most cost-effective and prudent means of meeting the company's SO₂ compliance obligation. No party has offered any evidence to the contrary.

15. Next OPC faults the Commission for relying upon forecasted mine mouth prices rather than delivered prices. The Commission's assumption that transportation costs would be similar for two coal sources located in fairly close proximity to one another is entirely reasonable, especially considering the fact that we are dealing with long range fuel forecasts. OPC simply disagrees, but that does not constitute grounds for seeking reconsideration.

16. OPC dismisses as "simplistic" forecasted prices for low sulfur coal sponsored by witnesses Black and Hernandez and relied upon by the Commission. The fact remains that the forecasted information is in the record and supports the Commission's decision. The fact that it may not be complicated enough for OPC does not render it any less reliable or effective.

17. OPC next contends that Late-Filed Deposition Exhibit 1 (contained in Late-Filed Exhibit 14) only shows projected coal costs for Big Bend Units One and Two. OPC apparently has overlooked the pages of this exhibit which do, in fact, set forth the company's forecasted natural gas costs as well as comparisons of forecasted coal and natural gas costs.

18. OPC criticizes Tampa Electric for presenting its fuel price forecast using certain megawatt hour output parameters and heat rate assumptions requested by Staff. (OPC's Motion, paragraph 15). A utility does not fail to act reasonably when it complies with a reasonable request by the agency that regulates it, particularly when the Staff is using the requested parameters to test the reasonableness of the utility's conclusions. OPC did not challenge the parameters requested by Staff, or request any different parameters of its own.

19. OPC criticizes the Commission's reliance upon revenue requirement cost differentials – a common planning tool, and the presentation of fuel costs in total dollar amounts for each year in witness Hernandez's Late-Filed Deposition Exhibit 6. (OPC's Motion, paragraph 18). Presumably, had monthly totals been presented, OPC would be demanding weekly

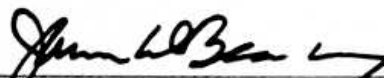
projections, or if presented in a weekly format, then daily or hourly. OPC attempts to set up a straw man analysis where there can be no "right" way to pass muster under a continuous after-the-fact demand for minutia. Providing the greater detail OPC now demands would not have led the Commission to a different conclusion, particularly given the long-range planning horizon associated with this project. This may have accounted for OPC's willingness to agree on the front end that the FGD project is the most cost-effective alternative available to Tampa Electric. OPC did not offer any evidence to the contrary.

20. OPC's Motion for Reconsideration merely registers OPC's disagreement with the Commission's decision in this proceeding and reargues positions already carefully considered and rejected by the Commission. Such motion is refuted by -- and should be barred by -- OPC's own prior express concession that Tampa Electric has demonstrated that its proposed FGD project is the most cost-effective option available.

WHEREFORE, Tampa Electric urges the Commission to deny OPC's Motion to Dismiss and FIPUG's joinder in such motion.

DATED this 8th day of February, 1999.

Respectfully submitted,



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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 hand delivery (*) or U. S. Mail on this 8th day of February 1999 to the following:

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