

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of Tampa Electric Company's** ) **Docket No. 031033-EI**  
**waterborne transportation contract with** )  
**TECO Transport and associated benchmark** )  
\_\_\_\_\_ ) **Filed January 26, 2004**

**MOTION FOR RECONSIDERATION**

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 (the "residential electric customers"), by and through their undersigned attorney, pursuant to Rules 25-22.0376, 25-22.060 and 28-106.204, Florida Administrative Code, hereby files their motion for reconsideration of Florida Public Service Commission ("Commission") Order No. PSC-04-0048-PCO-EI. In support of this motion, the residential electric customers state as follows:

1. By their Joint Motion to Establish Appropriate Hearing Schedule filed December 22, 2003, the Citizens of the State of Florida ("Citizens") and the Florida Industrial Power Users Group ("FIPUG") sought to have the Commission reinstate the original, and substantially more reasonable, dates for the evidentiary hearing in this case of May 26 and 27, 2004, in lieu of the currently scheduled dates of April 13 and 14, 2004. In support of their motion, Citizens and FIPUG stated, "Movants submit that this schedule change is highly prejudicial to their ability to prepare for hearing in this matter."

Joint Motion at page 2. Citizens and FIPUG further noted the detriment of the schedule change at page 3 of their motion, saying:

Order No. PSC-1398-PCO-EI has the effect of depriving Movants of an effective point of entry into the administrative process and the ability to conduct a thorough review of the important issues in this docket.

(Emphasis supplied.)

2. Also on December 22, 2003, the residential electric customers filed their pleading adopting the Citizen's and FIPUG's Joint Motion, saying:

The residential electric customers adopt the Joint Motion of the Citizens and FIPUG, including all the reasoning stated therein, but specifically the assertion that shortening the time for preparation in this complex case is highly prejudicial to their ability to prepare for hearing.

(Emphasis supplied.)

3. Order No. PSC-04-0048-PCO-EI, issued January 16, 2004 denies the two motions of the three parties involved to have the additional time for preparation allowed by the originally announced schedule, saying in pertinent part:

The current hearing schedule is consistent with the expressed intentions of the full Commission and does not prejudice any party.

(Emphasis supplied.)

#### MISTAKE OF FACT

4. While in retrospect the clearly better practice would have been for FIPUG, the Citizens and the residential electric customers to have filed affidavits describing the extent to which they were prejudiced by the shortening of the time schedule, the fact is that their counsel filed two separate pleadings alleging that they were prejudiced by, in

the words of the Joint Motion, being deprived of “the ability to conduct a thorough review of the important issues in this docket.” The residential electric customers would respectfully submit that the Prehearing Officer made a mistake of fact by finding that the moving parties were not prejudiced by the schedule change, when they specifically alleged that they were. This departure from the original schedule is especially troublesome given the paucity of any reasoning that either the utility or the Commission would benefit from a seemingly arbitrary modification of the previously announced schedule. Rather, the only “prejudice” to the utility discussed in the order, but not cited as a basis for the denial, was that Tampa Electric would remain a “target” for anonymous letters and “similar attacks,” which the utility apparently was alleging had an adverse impact on its “financial integrity.”<sup>1</sup>

5. The residential electric customers submit that there were ample assertions in the pleadings of the customer parties to support a finding that they would be, as they all alleged, prejudiced by the shortening of both the time to file testimony and in the evidentiary hearing dates. Aside from the prejudice asserted by the utility, which was mentioned but not relied upon in the order, the sole additional basis for the denial of the additional time appeared to be that the customer parties should have been on notice that the time could be shortened, as well as a “because we can” foundation.

WHEREFORE, Catherine L. Claypool, Helen Fisher, William Page, Edward A. Wilson, Sue E. Strohm, Mary Jane Williamson, Betty J. Wise, Carlos Lissabet, and Lesly

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1. An even casual reading of the financial press regarding Tampa Electric’s “financial integrity” would lead most observers to conclude that the utility has far larger and more fundamental problems potentially concerning investors than anonymous correspondence, which the utility failed to document as a basis for

A. Diaz would respectfully request that the full Commission reconsider Order No. PSC-04-0048-PCO-EI, find that the Prehearing Officer made a critical mistake of fact in concluding that the customer parties would not be prejudiced by the shortened hearing and testimony filing deadlines, and provide all the customer parties with additional time to prepare their testimony and for hearing by lengthening the schedule to at least the times provided by the initial schedule.

Respectfully submitted,

/s/ Michael B. Twomey

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actual financial integrity impacts.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this petition has been served by U.S. Mail or email this 26th day of January, 2004 on the following:

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