

ORIGINAL

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Subject: Docket 031033-EI

In compliance with the Commission's procedures on e-filing, Public Counsel and FIPUG state as follows:

A: The person responsible for this filing is:

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B: The document is filed in Docket 031033-EI, Review of Tampa Electric Company's 2004-2008 waterborne transportation contract with TECO Transport and associated benchmark.

C: The document is filed on behalf of Public Counsel and FIPUG.

D: The document is 4 pages long.

E: The attached file contains the Joint Response in Opposition to Tampa Electric Company's Motion for Reconsideration of Order No. PSC-04-0544-CFO-EI.

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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: June 21, 2004

**JOINT RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-04-0544-CFO-EI**

The Citizens of the State of Florida (Public Counsel) and The Florida Industrial Power Users Group (FIPUG) (collectively, Intervenors), pursuant to rules 25-22.0367 and 28-106.204, Florida Administrative Code, file this Response in Opposition to Tampa Electric Company's Motion for Reconsideration of Order No. PSC-04-0544-CFO-EI. TECo's motion fails to meet the standard required for reconsideration; therefore, it must be denied. As grounds therefore, Intervenors state:

Standard for Motion for Reconsideration

The standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its 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); *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*.

Argument

1. TECo's Motion for Reconsideration of Order No. PSC-04-0544-CFO-EI fails to satisfy the standard for reconsideration and should be denied. In its Joint Response in Opposition to TECo's Request for Confidential Classification of Portions of the Testimony and Exhibits of Intervenor Witnesses, dated April 26, 2004, Intervenor argued – and the Commission's order held – that the “percentage figure”¹ and the “dollar amount”² which TECo seeks to overcharge ratepayers for waterborne transportation services from its sister company are not confidential. These figures are the result of Mr. Majoros' analysis and are his professional work product and opinion. TECo's motion does not oppose the Intervenor's arguments that the percentage figure and the dollar amount do not contain information about contract terms and rates or disclose any information about existing contracts. In addition, TECo's motion demonstrates the correctness of Intervenor's argument that the percentage figure and dollar amount cannot be used to “back into” other confidential numbers in the absence of the recommended “rate number” appearing on page 2, line 9, and Exhibit MJM-5, page 1 of 8, column 8, row 4.³

2. TECo's motion not only fails to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its order, but it actually confirms the correctness of Intervenor's arguments and the Commission's holding in Order No. PSC-04-0544-CFO-EI. Therefore, TECo's motion should be denied and, at a minimum, the following information should be made public consistent with the Commission's order:

- Majoros testimony, page 2, lines 7 and 12; and
- Majoros testimony, page 28, line 1.

¹ Majoros testimony, page 2, line 7, and page 28, line 1.

² Majoros testimony, page 2, line 12.

³ Intervenor did not argue in their response that the Commission should order publication of the rate number, and they take no position here as to the rate number's confidentiality.

WHEREFORE, Intervenors request that the Commission deny TECo's Motion for Reconsideration.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Response in Opposition to Tampa Electric Company's Motion for Reconsideration of Order No. PSC-04-0544-CFO-EI, has been furnished by (*) e-mail and U.S. Mail this 21st day of June 2004 to the following:

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