

ORIGINAL

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Subject: Docket No. 031033-EI

In compliance with the Commission's procedures on e-filing, FIPUG's attorney states as follows:

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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 FIPUG.

D: The document is 4 pages long.

E: The attached file contains The Florida Industrial Power Users Group's Response in Opposition to Tampa Electric Company's Motion for Reconsideration of Order No. PSC-04-0543-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

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-04-0543-CFO-EI**

The Florida Industrial Power Users Group (FIPUG), 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 Nos. PSC-04-0543-CFO-EI. TECo's motion fails to meet the standard required on reconsideration; therefore, it must be denied. As grounds therefore, FIPUG states:

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 fails to satisfy the standard for reconsideration – the motion fails

to identify a point of fact or law that the Commission has overlooked. TECo's motion is a reargument of its request for confidential classification. TECo's sole argument is that the document contains confidential proprietary information of Dibner Maritime Associates (DMA) and Mr. Dibner. As discussed below, by Mr. Dibner's own admission the information is not his own. Therefore, the Commission's decision should stand.

2. TECo's motion requests that the Commission reconsider its Order with respect to the example Inland Barge Transportation Rate Analysis (Example) produced in response to FIPUG's Interrogatory No. 4. TECo argues in its motion that the Order incorrectly concluded that the Example "is not based upon the DMA model or methodology." This argument is belied by the plain language of the Example, which states: "**It is not the methodology, structure or model used by DMA. . . .**" (emphasis added).

3. TECo also argues that the Example "could be taken and used by Mr. Dibner's competitors (other maritime industry consultants) and would cause significant harm to Mr. Dibner's ability to earn his livelihood in the maritime industry." TECo's bald face assertions are unsupported by its motion. The Example plainly states that it does not contain the methodology, structure or model used by DMA. Further, the Example notes that it "may have limitations in its adaptability. . . ." Given the limited adaptability of the Example, and the fact that it does not contain the methodology, structure or model used by DMA, it is highly unlikely that its dissemination poses any risk of harm to Mr. Dibner. Therefore, TECo's motion should be denied.

WHEREFORE, FIPUG requests that the Commission deny TECo's Motion for Reconsideration.

s/ Timothy J. Perry
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to Tampa Electric Company's Motion for Reconsideration of Order No. PSC-04-0543-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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