

ORIGINAL

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 N. TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P.O. BOX 3350, TAMPA, FL 33601-3350
(813) 224-0800 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GARDNER
TALLAHASSEE, FLORIDA 32301
(904) 222-2222
(904) 222-2600 FAX

October 12, 1998

VIA HAND DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 980693-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Motion to Reopen the Record in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

2
Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/pw
Encls.

W. Tew
1
5

11345 OCT 12 1998

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric Company)
for Approval of Cost Recovery for a New) Docket No. 980693-E1
Environmental Program, the Big Bend Units)
1 and 2 Flue Gas Desulfurization System:) Filed: October 12, 1998
_____)

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO REOPEN THE RECORD**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.037, Florida Administrative Code, moves for an order opening the record in this case for the very limited purpose of accepting newly discovered evidence in the form of TECo prefiled testimony in a related docket which was not available at the time of hearing and which is germane to the issues before the Commission. As grounds therefor, FIPUG states:

1. In this case, Tampa Electric Company (TECo) has requested that the Commission preapprove its plan to comply with Clean Air Act Amendment (CAAA) requirements by approval of a \$90 million plus FGD system. TECo's proposal deals only with SO₂ removal, while ignoring the other CAAA requirements, such as NO_x removal. This is illustrated by the recent TECo filing in Docket No. 980007-EG of the testimony of TECo witnesses Karen Zwolak and Gregory Nelson. The Commission should reopen the record to insert and consider this testimony in this proceeding.

2. In the testimony of TECo witnesses Zwolak and Nelson filed in that docket, TECo requests that the Commission approve for recovery through the environmental cost recovery clause (ECRC) some \$1.6 million to defray a small part of the costs for CAAA compliance, including SO₂ and NO_x removal. This demonstrates that there is a significant investment in

NOx removal already in place and from this testimony the Commission may be able to ascertain the full impact of CAAA compliance. TECo does have a plan in place and under construction to comply with CAAA. TECo has simply failed to divulge this comprehensive plan to the Commission and to the parties in this case. The Commission should consider this in making its decision in this case.

3. It is within the agency's discretion as to whether to reopen the record. *Oceania Joint Venture v. Trillium, Inc.*, 681 So.2d 881 (Fla. 3d DCA 1996); *Department of Health and Rehabilitative Services v. Muniz*, 580 So.2d 886 (Fla. 3d DCA 1991). The evidence at issue in this motion was not available at the time of hearing in this matter and could not have been discovered before hearing.¹ Further, the evidence is material to the issues the Commission will decide in this case.

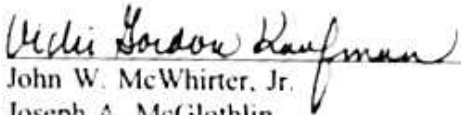
4. The Commission should exercise its discretion to put the evidence outlined above into the record of this case so that it will be fully aware of all of TECo's plan regarding CAAA compliance.² FIPUG requests that the record be opened only for the limited purpose of accepting this prefiled testimony.

WHEREFORE, FIPUG requests that the Commission enter an order reopening the record

¹ It was received on October 6.

² TECo should not object to reopening the record for the limited purpose of receiving the testimony of its own witnesses on the very topic at issue in this case.

for the limited purpose of inserting the testimony discussed above.



John W. McWhirter, Jr.

Joseph A. McGlothlin

Vicki Gordon Kaufman

McWhirter, Reeves, McGlothlin, Davidson,

Decker, Kaufman, Arnold & Steen, P.A.

117 South Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 222-2525

400 North Tampa Street, Suite 2400

Post Office Box 3350

Tampa, Florida 33601-3350

Telephone: (813) 224-0866

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **FIPUG's** foregoing **Motion to Reopen the Record** was furnished by hand delivery (*) or U.S. Mail to the following this **12th** day of **October, 1998**:

Grace A. Jaye*
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building, Room 390Q
Tallahassee, Florida 32399-0850

John Roger Howe
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

Gail Kamaras, Director
Energy Advocacy Program
Legal Environmental Assistance
Foundation
1114-E Thomasville Road
Tallahassee, Florida 32303-6290

Lee L. Willis
James Beasley
Ausley & McMullen
227 South Calhoun Street (32301)
Post Office Box 391
Tallahassee, Florida 32302

Harry W. Long, Jr.
TECo Energy, Inc.
Post Office Box 111
Tampa, Florida 33601-0111


Vicki Gordon Kaufman