



JACK SHREVE
PUBLIC COUNSEL

STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400
904 488 9330

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FPSC Records/Reporting

October 30, 1997

Ms. Blanca S. Bayó, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RE: Docket No. **970171-BU**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies each of a Joint Motion for Reconsideration and Request for Oral Argument for filing in the above referenced docket

11203-97
11204-97

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess
Deputy Public Counsel

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- CAF _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate)
cost allocation and regulatory)
treatment of total revenues associated)
with wholesale sales to Florida)
Municipal Power Agency and City of)
Lakeland by Tampa Electric Company.)
_____)

Docket No. **970171-EU**
Filed: October 30, 1997

JOINT MOTION FOR RECONSIDERATION

The Citizens of the State of Florida, through the Office of Public Counsel, and Florida Industrial Power Users Group ("FIPUG"), through its undersigned counsel, pursuant to Rule 25-22.060, Florida Administrative Code, move the Florida Public Service Commission to reconsider its Order No. PSC-97-1273-FOF-EU, issued October 15, 1997, and as grounds therefor, state

1. The Commission's order in this docket violates two stipulations and the orders approving them. The "First Stipulation" between Tampa Electric, FIPUG, and the Office of Public Counsel was signed on March 25, 1996, and approved in Order No. 96-0670-S-EI, issued May 20, 1996, in Docket No. 950379-EI. Paragraph 11 provides as follows:

11. The calculation of the actual ROE for each calendar year will be on an "FPSC Adjusted Basis" using the appropriate adjustments approved in Tampa Electric's full revenue requirements proceeding. All reasonable and prudent expenses and investment will be allowed in the computation and no annualization or proforma adjustments shall be made.

The "Second Stipulation" was signed on September 25, 1996, and approved in Order No. PSC-96-1300-S-EI, issued October 24, 1996, in Docket No. 960409-EI. Together, these stipulations require that Tampa Electric's earnings for each year, 1996-1999, be calculated consistent with paragraph 11 above to determine revenue amounts to be deferred and/or refunded. In Order No. PSC-97-1273-

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FOF-EU, the commission appears to support the applicability of the second stipulation (page 7), but then undermines the stipulation through a reduction of retail operating revenues

2. Neither the stipulations nor the orders approving them permit an artificial reduction in calculated earnings for those years based on the inadequacy of wholesale fuel revenues to cover system incremental fuel costs. To the contrary, appropriate adjustments were made in the company's last rate case to prevent events in the fuel docket from affecting the return-on-equity calculation

3. The inconsistency in Order No. 97-1273 is startling. On the one hand, the Commission, at page 9, finds (as it must) that the stipulations require a jurisdictional separation of the FMPA and Lakeland sales. On the other hand (and in the same paragraph), the Commission concludes that, under certain circumstances,

TECO may reduce retail operating revenues, for monthly surveillance purposes, by an amount equal to the shortfall [between the system incremental cost recorded for FMPA and Lakeland in the fuel docket and the revenues actually received]. We acknowledge that using retail operating revenues to make up this difference will reduce the potential for a refund under the Stipulation. However, the benefit TECO's retail ratepayers will derive from the separation of capital and O&M costs is greater than the reduction in retail operating revenues due to anticipated shortfalls

The Commission has absolutely no authority, however, to modify orders approving negotiated stipulations without a finding that such modification is necessitated by changed circumstances. See, e.g., City of Homestead v. Beard, 600 So. 2d 450, 453 n.5 (Fla. 1992), Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 339 (Fla. 1966). In this case, there can be no changed circumstances because the new event, i.e., Tampa Electric's entering into new wholesale contracts, was specifically contemplated by the parties and addressed in paragraph 5.F. of the Second Stipulation¹. None of the parties to this proceeding were on notice that the Commission might modify the stipulations

¹Paragraph 5.7 is quoted at page 7 of Order No. 97-1273

4. The shortfall in wholesale fuel revenues in relation to wholesale fuel costs is not a cost associated with the provision of retail electric service. The Commission has no authority to require retail ratepayers to pay higher rates (in the form of reduced refunds under the stipulations) to make up for revenue shortfalls in the wholesale jurisdiction.

5. The Commission is also factually incorrect in its conclusion that customers will still receive a net benefit from its unwarranted modification of the stipulations. Tampa Electric Company's wholesale contracts with FMPA and Lakeland required the commitment of generating capacity which was previously available to make economy sales. Entering into these contracts increased retail fuel costs by reducing the 80% share of the gain on economy sales which would normally be flowed through the fuel cost recovery mechanism to retail customers. The record reflects, without contradiction, that Tampa Electric's decisions to enter into these contracts reduced the flow back of the 80% gain on economy sales by \$3.5 million over the lives of the contracts with a concomitant increase in retail fuel costs. [T. 155, 171, 178, 325, 378-81, 391]²

²The Citizens addressed this issue in detail (under a heading in bold lettering) beginning on the first page of their brief filed July 7, 1997. The staff recommendations, however, did not discuss Public Counsel's identification of the issue or the position taken on it (apart from repeating, in the preamble of staff's discussion of Issue #1, the statement of position which read, in pertinent part: "Tampa Electric did not prove benefits would exceed: (1) the \$3.5 million of lost gains on economy sales")

Tampa Electric's witnesses, Mr. Ramil and Ms. Branick, testified that foregone gains were "considered" in calculating net benefits in the company's cost benefit analysis. [T. 185-87, 378-81] But, as a factual matter, nothing was offered in the company's proposal to fully offset the \$3.5 million increase in retail fuel adjustment charges. Apparently, the company's consideration of foregone gains on economy sales lessened the projected benefits to \$2.4 million (with \$2 million offered as a guarantee), but the bottom line effect on customers was to be a loss of \$1.1 million (\$3.5 million minus \$2.4 million). The alternate staff evidently concluded the company had demonstrated net benefits of \$2.4 million by simply ignoring the foregone economy sales gains.

6. The Commission concluded in Order No. 97-1273, at page 9, that separating the FMPA and Lakeland sales pursuant to the stipulation "will provide overall benefits to TECO's retail ratepayers." There is no competent, substantial evidence in the record to support the finding that TECO's retail ratepayers will receive an overall benefit. Separation of the FMPA and Lakeland sales may increase the likelihood of refunds under the stipulation, but information necessary to discern whether, and in what amount, refunds would actually result is not to be found in the record of this proceeding. Without such evidence, the Commission cannot possibly make a factual determination that the purported benefits of separation will exceed foregone economy sales gains and result in "overall benefits."

7. The order protects Tampa Electric from the consequences of its negotiated stipulation, and violates Order No. PSC-97-0262-FOF-EI, issued March 11, 1997. That order, which was issued in the fuel docket, Docket No. 970001-EI, requires an electric utility to report wholesale fuel costs for new separable sales on an average cost basis. If, however, the utility can demonstrate that the wholesale contract provides net benefits to its customers, then the utility can report its fuel cost for that sale at less than system average. The utility's reward for demonstrating net benefits pursuant to the order is the ability to report less-than-average fuel costs for the wholesale sale, which, because of the arithmetic used in the fuel schedules, increases the amount of fuel cost recovery from the retail jurisdiction.

8. TECO's retail operating revenues should not be reduced if the fuel revenues from wholesale sales is less than average cost. The Commission keeps recovery clause issues and base rate proceedings separate so that the cost recovery clauses cannot affect base rates. Nothing in Order No. 97-0262 suggests the Commission contemplated that a showing of net benefits would entitle a utility

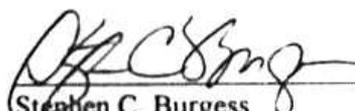
to both a higher retail fuel cost recovery and higher base rates (in the form of reduced refunds under the stipulation with Tampa Electric). There is also nothing in Order No. 97-0262 to suggest Tampa Electric could be treated differently from the other electric utilities because Tampa Electric's future earnings are subject to potential refunds.

9. This motion has identified mistakes and misapprehensions of fact or law which, if corrected, require the Commission to withdraw that portion of Order No. 97-1273 which authorizes Tampa Electric to reduce retail operating revenues to make up for shortfalls in wholesale fuel cost recovery. Tampa Electric's decision to enter into the FMPA and Lakeland contracts will require retail customers to pay \$3.5 million more in foregone savings on economy sales and to make up the difference between system incremental and average fuel cost. That is more than enough harm without the Commission also violating the stipulations to reduce the independent, negotiated rights of Tampa Electric's customers. How can any party reach a stipulation in a good faith spirit of compromise, if key elements of the agreement can be shifted so easily?

WHEREFORE, the Citizens of the State of Florida, through the Office of Public Counsel, and the Florida Industrial Power Users Group ("FIPUG") through their undersigned counsel, move the Florida Public Service Commission to reconsider its Order No. 97-1273-FOF-EU, issued October 15, 1997.

Respectfully submitted,

JACK SHREVE
Public Counsel

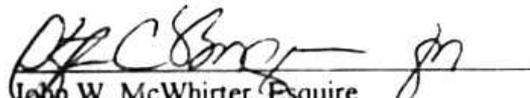

Stephen C. Burgess
Deputy Public Counsel

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

(850) 488-9330

Attorneys for the Citizens of
the State of Florida

AND


John W. McWhirter, Esquire
Vicki Gordon Kaufman, Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P A
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Industrial
Power Users Group

**CERTIFICATE OF SERVICE
DOCKET NO. 970171-EU**

I HEREBY CERTIFY that a true and correct copy of this Joint Motion for Reconsideration
has been sent by *Hand-delivery or U.S. Mail this 30th day of October, 1997 to the following

Gary Lawrence, Esquire
501 East Lemon Street
Lakeland, Florida 33801-5079

Robert Williams, Esquire
7201 Lake Ellionor Drive
Orlando, Florida 32809

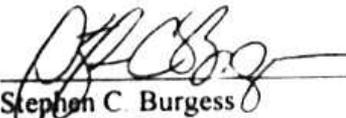
*Leslie Paugh, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Angela Llewellyn, Esquire
Regulatory and Business Strategy
Post Office Box 111
Tampa, Florida 33601-0111

James A. McGee, Esquire
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733-4042

G. Edison Holland, Esquire
Jeffrey A. Stone, Esquire
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32576

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


Stephen C. Burgess
Deputy Public Counsel