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April 11, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director  
Division of Records and Reporting  
Betty Easley Conference Center  
4075 Esplanade Way  
Tallahassee, Florida 32399-0870

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RECORDS AND REPORTING

Re: Docket No.: 010001-EI

Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ FIPUG's Motion to Compel Tampa Electric Company to Respond to Discovery and Request for Expedited Motion Hearing.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

*Vicki Gordon Kaufman*

Vicki Gordon Kaufman

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEIN, P.A. 06489 APR 11 2001

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and Purchased Power Cost Recovery  
Clause with Generating Performance Incentive  
Factor.

Docket No. 010001-EI

Filed: April 11, 2001

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**FIPUG's Motion to Compel Tampa Electric Company to Respond to Discovery  
and Request for Expedited Motion Hearing**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel Tampa Electric Company (TECo) to fully respond to the discovery propounded to it by FIPUG. As grounds therefor, FIPUG states:

**Introduction**

1. On March 7, 2001, FIPUG served its First Set of Interrogatories and First Request for Production on TECo.

2. On March 16, 2001, TECo filed a Motion for Protective Order<sup>1</sup> and Objections to certain interrogatories and production requests. Such objections should be rejected and TECo should be required to fully respond to FIPUG's discovery requests. Each TECo objection is discussed below.

3. On April 6, 2001, TECo filed its responses to FIPUG's discovery. The responses discussed below are inadequate and/or incomplete and TECo should be required to provide full and complete answers immediately.

**Interrogatory No. 1**

4. In Interrogatory No. 1, FIPUG asks TECo to "identify each firm contract to purchase

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<sup>1</sup>Though TECo labels its pleading a "motion for protective order," its two sentence motion does not meet the standards for a protective order which requires a showing of good cause. See, Rule 1.280(c), Florida Rules of Civil Procedure.

capacity and energy to which TECo or any affiliate is a party for 1999-2002. The interrogatory further asks TECo to identify for each contract the selling entity, the amount of capacity and energy purchased, the contract term and the nature of the obligation. TECo objects on the basis that the request is “irrelevant and overbroad.” However, just a brief review of the request belies that claim.

5. One of the primary obligations of the Commission in this on-going fuel adjustment proceeding is to assess the prudence of the utilities’ power purchases. This interrogatory goes directly to that point as it seeks information about TECo and its affiliates’ contracts to purchase energy and capacity as well as the broad details of such arrangements. As the Commission will recall from FIPUG’s presentation at the Agenda Conference at which TECo’s petition for mid-course correction was considered, FIPUG raised the issue of TECo’s high fuel cost. FIPUG stated that it believed that the reason TECo found it necessary to seek a mid-course correction was that TECo had engaged, and continues to engage, in the practice of selling power in the wholesale market while at the same time purchasing more expensive power to serve its retail load. When the Staff was asked about this practice, they replied that it would be thoroughly investigated in the fuel docket and considered at the November 2001 fuel adjustment hearing. FIPUG’s discovery goes directly to that issue and therefore is entirely relevant.

6. Nor is FIPUG’s Interrogatory No. 1 “overbroad.” To the contrary, it is limited in time, seeking information just for the three (3) years, as well as in scope, seeking only fundamental information as to the contracts.

7. Finally, TECo’s assertion that some of the information “may” be available on the FERC website does not relieve it of its duty to respond to discovery.

8. Last, TECo objects to providing information regarding affiliate contracts. However, purchases made by its affiliates will provide telling information regarding whether it is doing an adequate job for retail ratepayers and is relevant to the Commission's inquiry.<sup>2</sup>

### **Interrogatory No. 2**

9. Interrogatory No. 2 asks for information regarding capacity in the retail rate base which TECo has committed to wholesale sales. It specifically asks for the amount of firm capacity committed and the rate base book value of such capacity. To avoid answering the question clearly posed, TECo provides a non-answer. That is, it says it does not separate assets used for short-term sales (less than one year) or non-firm sales and so cannot answer the question. It provides a similar non-answer for the value of such capacity. However, TECo can clearly identify that capacity which it has dedicated to wholesale sales and it certainly knows the value of such capacity. Thus, it should be required to respond to the question. In subpart (e) of this interrogatory, FIPUG asks TECo to provide the carrying costs charged to the retail customers for such capacity. TECo simply states that this information is "not available." TECo clearly has the ability to provide an answer to this question and should be required to do so.

### **Interrogatory No. 3**

10. In Interrogatory No. 3, FIPUG asks TECo to provide the rationale for its conclusion that the wholesale sales described in Interrogatory No. 2 provide "net benefits to ratepayers." Again, TECo says that the information to provide such a rationale is "not available." If this means that TECo has no such rationale, it should so state. To the extent it can support any claim of "net

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<sup>2</sup>TECo also says that turning over affiliate contracts would "likely" cause harm to the competitive interests of the affiliate. This is nothing more than a bald assertion with absolutely no basis provided.

benefits”, it must provide such rationale to FIPUG.

#### **Interrogatory No. 4**

11. This interrogatory seeks information *directly* relevant to the Commission’s inquiry in this docket. It inquires as to the prices TECo paid to its affiliates during 1999-2002 which were charged to the fuel and capacity clauses. TECo objects on the grounds that this is confidential, proprietary business information. In essence, TECo wants to keep secret the amounts it pays to its sister companies (clearly not an arms’ length transaction) from the very parties who pay those costs *dollar for dollar!* That is, TECo wants the parties who foot the bill to take it on faith that the prices TECo pays to related companies are the best prices it could get in the open marketplace. FIPUG is entitled to test this “theory” through access to information regarding the prices paid. To the extent TECo refuses to reveal in the sunshine information as to purchases ratepayers must pay for, it may simply not deal with non-affiliated companies and alleviate its concern over harm to its sister companies.

12. TECo then makes the unsubstantiated allegation that FIPUG members “might” find such information useful in competing with TECo affiliates and that FIPUG has failed to disclose whether any members could gain an “advantage” by having this information. TECo’s argument turns this issue (and the purpose of discovery) on its head. Ratepayers, who pay the bills to TECo’s sister companies, are entitled to know whether these purchases are in their best interests. The only way they can possibly know that is to have access to this price information.

13. After filing its initial objection, TECo apparently reconsidered its objection and filed a response. It provided some information, but not with the specificity FIPUG seeks.

#### **Interrogatory No. 5**

14. Interrogatory No. 5 asks TECo whether any competitive bids were used for any affiliate transactions and if so, to describe what criteria governs whether a purchase will be bid. TECO responds that some items were competitively bid and then says the Commission has established criteria for the “prudence of rates” charged for certain types of purchases. Again, TECo does not answer the simple question asked. FIPUG simply wants to know what criteria, if any, TECo itself uses in deciding whether to bid out a certain transaction. TECo should be required to respond.

#### **Interrogatory No. 7**

14. This interrogatory asks TECo to explain the difference in methodology used to calculate the fuel cost component of wholesale sales (Interrogatory No. 6) and the methodology TECo uses to determine the price to pay to cogenerators. TECo essentially responds that FIPUG can figure that out itself by comparing the two methodologies. But FIPUG is interested in, and entitled to know, what TECo believes the differences are and TECo should be required to answer.

#### **Interrogatory No. 11(a), (c) & Interrogatory No. 18**

15. Interrogatory Nos. 11(a) and (c) ask TECo to identify, for the interruptions listed in a prior interrogatory, the TECo generating units that were on line during the interruption and the TECo units that were out of service. TECo says these questions are “overbroad” and would impose a “tremendous burden” on it because TECo would have to gather the information.

16. Interrogatory No. 18 seeks TECo’s system hourly incremental costs, an explanation of how those costs are calculated and a reconciliation with the hourly system lambda data provided to FERC. Again, TECo says this is a “burdensome” request. TECo also states, with absolutely no basis, that providing this information would interfere with its ability to compete.

17. Again, the information sought in these interrogatories is directly related to whether TECo is acting prudently and in the best interests of ratepayers. Just because it would take some effort on TECo's part to gather the information, does not mean that it need not be provided. *Goodyear Tire & Rubber Co. v. Cooley*, 359 So.2d 1200 (Fl. 1st DCA 1978); *Carson v. City of Ft. Lauderdale*, 173 So.2d 743 (Fl. 2d DCA 1965).

**Interrogatory Nos. 15 & 17**

18. Interrogatory No. 15 asks TECo to provide certain information about the sales identified "in Interrogatory No. 13." TECo responds that no such sales were identified in "Interrogatory No. 13" (which should have been Interrogatory No. 14). Similarly, Interrogatory No. 17 asks for information regarding the sales referenced in Interrogatory No. 15 (which should have been Interrogatory No. 16) and TECo provides a similar response. Clearly, the incorrect reference is a scrivener's error and even the most casual review of the interrogatories (or a quick call to counsel) makes the appropriate reference obvious. TECo should be required to fully answer both these interrogatories.

**Production Request No. 1**

19. Production Request No. 1 seeks the documents TECo relied on in responding to FIPUG's interrogatories. TECo complains that this request is "unduly burdensome and oppressive." But all FIPUG seeks are the documents which underlie TECo's answers so as to review TECo's underlying support for its responses. There is nothing burdensome or oppressive about that. TECo further asserts that "a significant portion" of the documents sought is proprietary, but this vague generalization cannot sustain a refusal to produce the documents.

### **Production Request No. 2**

20. Production request No. 2 seeks system status reports for each day from April 1999 to February 2001 in which TECo's operating reserve was less than 50 MW. TECo refuses to produce some of the reports on the basis that it produced them in a prior Commission proceeding. FIPUG does not deny that. However, after they were produced, TECo required FIPUG to return the documents to it and therefore such documents are no longer in FIPUG's possession. Thus, FIPUG has no ability to analyze the documents for purposes of this proceeding or to use them in the cross-examination of TECo's witnesses. Further, FIPUG does not seek *all* status reports for this time period, but only those in which TECo's operating reserve fell below 50 MW. Additionally, TECo objects to producing the reports from April 1, 1999 but subject to other objections states it might produce them from November 1, 1999 forward. However, it is critical to the Commission's inquiry to have information related to the spring/summer periods when reserve margins have typically been the lowest.

### **Production Request No. 3**

21. This request asks TECo to produce documents demonstrating how it complied with Order No. PSC-97-1273-FOF-EU regarding separation of the FMPA and Lakeland sales. While TECo provides a very brief narrative of what it says it did, it provides absolutely no documentation though it refers to the HAP program. If TECo has documentation to support its compliance with the order, it must produce it. If not, it should simply so state.

### **Request for Expedited Motion Hearing**

22. The information TECo has withheld from FIPUG is directly relevant to the issues in this case and thus to FIPUG's case preparation. Therefore, FIPUG requests that the Prehearing

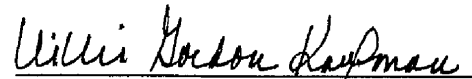


Officer schedule this motion for hearing immediately to resolve these outstanding discovery issues.

**WHEREFORE**, FIPUG requests that:

a. This motion be set for immediate hearing;

b. That its motion to compel be granted and that TECo be ordered to immediately respond to FIPUG's discovery requests as delineated above.



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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing FIPUG's Motion to Compel Tampa Electric Company to Respond to Discovery and Request for Expedited Motion Hearing has been furnished by \*hand delivery, or U.S. Mail this 11th day of April, 2001, to the following:

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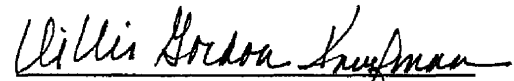
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