

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

ORIGINAL

RECEIVED-FPSC
01 APR 18 PM 4:07
RECORDS AND REPORTING

April 18, 2001

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor; FPSC Docket No. 010001-EI

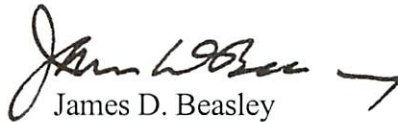
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and ten (10) copies of Tampa Electric Company's Response to FIPUG's Motion to Compel and Request for Expedited Motion Hearing.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

- APP _____
- CAF _____
- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- LEG 1 _____
- OPC _____
- PAI _____
- RGO _____
- SEC 1 _____
- SER _____
- OTH _____

JDB/pp
Enclosures

cc: All parties of record (w/enc.)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

04822 APR 18 01

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery)
Clause with Generating Performance Incentive) DOCKET NO. 010001-EI
Factor.) FILED: April 18, 2001
_____)

**TAMPA ELECTRIC COMPANY'S RESPONSE
TO FIPUG'S MOTION TO COMPEL AND
REQUEST FOR EXPEDITED MOTION HEARING**

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the Motion to Compel and Request for Expedited Motion Hearing filed by the Florida Industrial Power Users Group ("FIPUG") in the above proceeding on April 11, 2001:

Preliminary Matter

In its introduction and its footnote 1, FIPUG claims that Tampa Electric filed a two sentence Motion for Protective Order. In so doing FIPUG conveniently overlooks the fact that the motion incorporates by reference all of the detailed explanations of good cause set forth in Tampa Electric's individual objections.

Set forth below are Tampa Electric's responses to each of the individual matters asserted in FIPUG's Motion.

FIPUG's Interrogatory No. 1

FIPUG's Interrogatory No. 1 is irrelevant and overbroad, despite FIPUG's contrary assertions. This Interrogatory asks Tampa Electric to identify firm contracts to purchase capacity and energy to which Tampa Electric or any affiliate is a party; not contracts between Tampa Electric and an affiliate of Tampa Electric. There is a big difference. For example, Tampa Electric's affiliate, TECO Power Services Corporation, could be a party to a power purchase

agreement with another non-Tampa Electric related entity, inside or outside this state, and that transaction would have no impact whatsoever on FIPUG or any other Tampa Electric customer and no relevance whatsoever to any issue in this docket. It is only those transactions between a Commission regulated utility and its unregulated affiliate that may have relevance. But that is not what FIPUG requested.

Even FIPUG's own Motion to Compel is confusing as to what FIPUG seeks. After stating that one of the Commission's obligations in this proceeding is "to assess the prudence of the utility's power purchases," FIPUG says it needs information about "TECO and its affiliates' contracts to purchase energy and capacity as well as the broad details of such arrangements." FIPUG's Motion doesn't say "contracts between Tampa Electric and its affiliates." FIPUG has no right to see, nor is there any basis for FIPUG to demand access to, any information regarding agreements to which Tampa Electric is not a party. FIPUG knows this and its Motion to Compel states no justification whatsoever for its demand in this regard. Instead, FIPUG's Motion focuses its argument only on transactions to which Tampa Electric is a party, referring to occasions where Tampa Electric may be selling and buying power at the same time.

The ambiguity driven overbreadth of FIPUG's Interrogatory No. 1 is perhaps best illustrated in paragraph 8 of FIPUG's Motion to Compel. There, after stating that Tampa Electric objects to providing information regarding affiliate contracts, FIPUG makes the following statement:

"However, purchases made by its [Tampa Electric's] affiliates will provide telling information regarding whether it is doing an adequate job for retail ratepayers and is relevant to the Commission's inquiry."

The immediate question is who does “it” refer to in the phrase “whether it is doing an adequate job.” Does it mean Tampa Electric? The affiliate? Some other unidentified entity? Does FIPUG suggest that an unregulated affiliate of a utility must “do an adequate job for retail ratepayers” when it negotiates a power sales agreement to which the utility is not even a party?

If FIPUG were to take a little more care in drafting its interrogatories it might be able to avoid problems with overbreadth and irrelevance – problems that FIPUG, itself, has created.

If FIPUG is willing to revise its Interrogatory No. 1 to limit the scope of the requested information to those firm capacity and energy contracts to which Tampa Electric and an affiliate are parties, Tampa Electric will provide the information, subject to FIPUG’s execution of an appropriate non-disclosure agreement, if needed, to protect any confidential proprietary business information that may be involved.

Interrogatory No. 2

Tampa Electric has answered Interrogatory No. 2 to the best of its ability. FIPUG simply disagrees with Tampa Electric’s answer which is not a valid basis to demand a different answer.

Separated sales are not in the retail rate base. Non-separated sales (firm or non-firm) are not assigned a rate base book value or cost responsibility. Tampa Electric cannot respond to this interrogatory with any information other than what has already been provided in the monthly fuel schedules.

Historically, the Commission has treated sales that are non-firm or less than one-year in duration as non-separated sales. Since the assets used to serve the sales are not required to be separated, Tampa Electric does not have the information requested. Commission Order No. PSC-97-0262-FOF-EI explains the rationale as follows:

"It is important to understand the significance of a wholesale sale that is subject to a jurisdictional separation factor (a separated sale) and a wholesale sale that is not subject to a jurisdictional separation factor (a non-separated sale), as a different regulatory treatment exists for the costs and revenues associated with each type of sale.

"Because non-separated sales are sporadic, a utility does not commit long-term capacity to the wholesale customer. Non-separable sales are not assigned cost responsibility through a separation process, therefore the retail ratepayer supports all of the investment that is used to make the sale. In exchange for supporting the investment, the retail ratepayer receives all of the revenues, both fuel and non-fuel, that the sale generates through a credit in the fuel and capacity cost recovery clauses. ...

"Separated sales: We have traditionally allowed a sale to be separated if it is a long-term firm sale, greater than one year, that commits production capacity to a wholesale customer. In essence, a sale is separated to remove the production plant and operating expenses associated with the sale from the retail jurisdiction's cost responsibility."

The Commission has repeatedly refused to alter its long-standing policy to treat sales that are less than one-year in duration or are non-firm as non-separated sales and again validated its position in PSC-98-0073-FOF-EI, dated January 13, 1998, p. 8:

"Previously, we have clearly stated that revenues from non-separated sales should be credited to retail customers to compensate them for supporting the investment used in making these sales."

Interrogatory No. 3

Tampa Electric has answered Interrogatory No. 3 to the best of its ability. FIPUG simply disagrees with Tampa Electric's answer which is not a valid basis to demand a different answer.

Making non-separated sales allows Tampa Electric opportunities to optimize the use of its existing ratepayer-supported assets. Ratepayers receive the benefits of such sales since all revenue generated by the sales is credited back to ratepayers.

Historically, the Commission has treated sales that are non-firm or less than one-year in duration as non-separated sales. Since the assets used to serve the sales are not required to be separated, Tampa Electric does not have the information requested. Commission Order No. PSC-97-0262-FOF-EI explains the rationale as follows:

"It is important to understand the significance of a wholesale sale that is subject to a jurisdictional separation factor (a separated sale) and a wholesale sale that is not subject to a jurisdictional separation factor (a non-separated sale), as a different regulatory treatment exists for the costs and revenues associated with each type of sale.

"Because non-separated sales are sporadic, a utility does not commit long-term capacity to the wholesale customer. Non-separable sales are not assigned cost responsibility through a separation process, therefore the retail ratepayer supports all of the investment that is used to make the sale. In exchange for supporting the investment, the retail ratepayer receives all of the revenues, both fuel and non-fuel, that the sale generates through a credit in the fuel and capacity cost recovery clauses. ...

"Separated sales: We have traditionally allowed a sale to be separated if it is a long-term firm sale, greater than one year, that commits production capacity to a wholesale customer. In essence, a sale is separated to remove the production plant and operating expenses associated with the sale from the retail jurisdiction's cost responsibility."

The Commission has repeatedly refused to alter its long-standing policy to treat sales that are less than one-year in duration or are non-firm as non-separated sales and again validated its position in PSC-98-0073-FOF-EI, dated January 13, 1998, p. 8:

"Previously, we have clearly stated that revenues from non-separated sales should be credited to retail customers to compensate them for supporting the investment used in making these sales."

Interrogatory No. 4

Tampa Electric reasonably objected to Interrogatory No. 4 on a preliminary basis but, after reviewing information responsive to this interrogatory, determined that an appropriate answer would not need confidential classification. FIPUG's Motion to Compel, with respect to Interrogatory No. 4, sets forth two paragraphs of bombastic commentary followed by an acknowledgment that Tampa Electric answered the interrogatory. As far as Interrogatory No. 4 is concerned, FIPUG's Motion to Compel does not even merit a response.

Interrogatory No. 5

Again, Tampa Electric has answered Interrogatory No. 5.

Interrogatory No. 7

Tampa Electric provided a legitimate answer to Interrogatory No. 7. Rule 1.340(c), Florida Rules of Civil Procedure, gives Tampa Electric the option of providing documents with which to make the comparison inquired about in Interrogatory No. 7. Tampa Electric has done this. Tampa Electric believes that the differences sought by FIPUG are reflected in the two documents which speak for themselves. The Rules of Civil Procedure do not obligate Tampa Electric to perform an analysis of the two documents. Indeed, FIPUG can review the two documents and draw whatever conclusions it wishes, right or wrong.

Interrogatory No. 11A, C and Interrogatory No. 18

Tampa Electric adheres to its objections to Interrogatories Nos. 11A, C and 18. FIPUG apparently has a strategy of attempting to punish Tampa Electric by demanding the assembly of information that would involve countless personnel hours at great expense to Tampa Electric and its general body of ratepayers. FIPUG has used this strategy in numerous recent Commission proceedings producing little or no effect other than causing Tampa Electric to incur significant

expense. Tampa Electric and its general body of ratepayers should not be burdened with the cost of complying with FIPUG's "make work" strategy.

A special comment is in order regarding Interrogatory No. 18. Tampa Electric has a sound basis for its objection to this interrogatory to the effect that the information FIPUG has requested is not contained in any type of business report or other consolidated document but, instead, would have to be gleaned from more than 52,000 hours of data. That data would then have to be analyzed, reconciled and discussed. Moreover, even if the information could be provided, it is highly sensitive propriety business information. The interrogatory seeks in part Tampa Electric's system hourly incremental costs, the disclosure of which would be significantly harmful from a competitor standpoint given the highly competitive wholesale market that exists in this state. FIPUG can deny this, but that denial is hollow, unrealistic and erroneous.

Interrogatory Nos. 15 and 17

Tampa Electric has properly answered Interrogatory Nos. 15 and 17. If FIPUG wishes to revise its interrogatories, Tampa Electric will respond in accordance with the Rules of Civil Procedure. Discovery is not a collaborative process and no party is obligated to correct an adversary's errors or to respond to questions that are not asked.

Production Request No. 1

Tampa Electric adheres to its objection to Production Request No. 1 which asks Tampa Electric to produce all documents that the company relied on in responding to FIPUG's interrogatories. Given the broad base of FIPUG's interrogatories, the documentary basis for the company's answers runs throughout the company. There is no specificity at all in Production Request No. 1 which makes the request easy to ask but impossible to answer. If Tampa Electric

were to make such a request of FIPUG, the objection would be instantaneous and at a high decibel level. FIPUG's overbroad request should be rejected out of hand.

Production Request No. 2

Tampa Electric will allow FIPUG to review all of the system data reports from April 1999 through February 2001 that show an operating reserve of less than 50 MW, subject to FIPUG's execution of an appropriate non-disclosure agreement.

Production Request No. 3

Tampa Electric has answered the production request, as FIPUG notes, but has no documentation beyond that provided.

As to FIPUG's Request for Expedited Motion Hearing

The CASR schedule in this proceeding is such that disposition of FIPUG's Motion does not require expedited consideration. The Motion should be taken up in due course at the convenience of the Prehearing Officer.

WHEREFORE, Tampa Electric submits the foregoing as its response to FIPUG's Motion to Compel and Request for Expedited Motion Hearing.

DATED this 18th day of April 2001.

Respectfully submitted,



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response to FIPUG's Motion to Compel and Request for Expedited Motion Hearing, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (*) or U. S. Mail on this 18th day of April, 2001 to the following:

Mr. Wm. Cochran Keating, IV*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. James A. McGee
Senior Counsel
Florida Power Corporation
Post Office Box 14042
St. Petersburg, FL 33733

Mr. Joseph A. McGlothlin
Ms. Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 S. Gadsden Street
Tallahassee, FL 32301

Mr. Kenneth A. Hoffman
Mr. William B. Willingham
Rutledge, Ecenia, Underwood,
Purnell & Hoffman
Post Office Box 551
Tallahassee, FL 32302-0551

Mr. Robert Vandiver
Deputy Public Counsel
Office of Public Counsel
111 West Madison Street – Suite 812
Tallahassee, FL 32399-1400

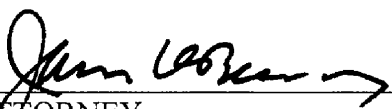
Mr. Matthew M. Childs
Steel Hector & Davis
215 South Monroe Street – Suite 601
Tallahassee, FL 32301

Mr. John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
Post Office Box 3350
Tampa, FL 33601

Ms. Susan Ritenour
Gulf Power Company
One Energy Place
Pensacola, FL 32520

Mr. Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, FL 32576

Mr. Norman Horton
Messer Caparello & Self
Post Office Box 1876
Tallahassee, FL 32302



ATTORNEY