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ORIGINAL

August 1, 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

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COMMISSION
CLERK

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

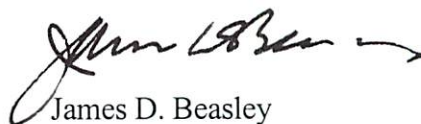
Dear Ms. Bayo:

Enclosed for filing in the above docket is the original and ten (10) copies of Tampa Electric Company's Motion to Compel the Florida Industrial Power Users Group to Respond to Discovery 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.

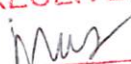
Sincerely,


James D. Beasley

JDB/pp
Enclosures

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

APP
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 010001-EI
FILED: August 1, 2001

**TAMPA ELECTRIC COMPANY'S
MOTION TO COMPEL THE FLORIDA INDUSTRIAL
POWER USERS GROUP TO RESPOND TO DISCOVERY
AND REQUEST FOR EXPEDITED MOTION HEARING**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 28-106.206, Florida Administrative Code, moves the Commission for entry of an order compelling the Florida Industrial Power Users Group ("FIPUG") to fully respond to the discovery propounded to it by Tampa Electric and, as grounds therefor, says:

INTRODUCTION

1. Tampa Electric served its First Set of Interrogatories and First Requests for Production of Documents on FIPUG on June 13, 2001. On June 25, 2001 FIPUG served its objections to Interrogatories 4, 7 and 14 and Requests for Production of Documents Nos. 1-6.

2. On July 13, 2001 Tampa Electric received three separate sets of what purport to be answers to Tampa Electric's interrogatories. The answers purport to be on behalf of IMC Phosphates, LaFarge Corporation and International Paper Company. The answers are largely non-responsive, argumentative, incomplete and, in many instances, attempt to re-characterize the questions asked. Many of FIPUG's answers do not comply with the Florida Rules of Civil Procedure. In addition, FIPUG has produced no documents requested by Tampa Electric

Company. The responses to Interrogatories discussed below are inadequate and incomplete and FIPUG should be required to provide and full complete answers immediately.

Interrogatory No. 1

Interrogatory No. 1 reads as follows:

1. Identify each member of FIPUG who is a Tampa Electric customer and who specifically authorized FIPUG to represent the member's interests in this proceeding prior to FIPUG's filing of its Notice of Reaffirming Party Status on January 3, 2001.

3. Of the three different FIPUG responses, one set (purporting to be IMC Phosphates answers) identifies a number of companies which the answer states from time to time share in the cost of intervening in regulatory matters. One company listed, Cargill Fertilizer, Inc., is noted as being "as to Florida Power issues only." Tampa Electric's interrogatory clearly asks FIPUG to identify each member who has authorized FIPUG to represent the member's interest in this proceeding. The question was not restricted to those FIPUG members who share the cost of FIPUG's participation in this proceeding. Moreover, FIPUG does not explain why IMC Phosphates, LaFarge Corporation and International Paper Company are the only FIPUG members who responded to the interrogatories. Why, for example, did Anheuser-Busch, Cargill, Casper Company and Mulberry Phosphates not submit answers? FIPUG should be compelled to fully respond to the interrogatory and indicate whether there are any other FIPUG members represented by FIPUG in this proceeding other than those listed by FIPUG in response to Interrogatory No. 1.

Interrogatory No. 2

Interrogatory No. 2 read as follows:

2. Identify each FIPUG member who is a Tampa Electric customer and who specifically authorized FIPUG to

represent the member's interests in this proceeding subsequent to FIPUG's filing of its Notice of Reaffirming Party Status on January 3, 2001.

4. FIPUG's answer to Interrogatory No. 2 suffers the same deficiencies as noted with respect to its answer to Interrogatory No. 1. FIPUG should be compelled to respond to Interrogatory No. 2 as it is written, identifying each and every FIPUG member who has authorized FIPUG to represent the member's interests for the time frame indicated. This is not limited to FIPUG members who have agreed to share the cost of participating in this proceeding.

Interrogatory No. 3

Interrogatory No. 3 read as follows:

3. Identify each FIPUG member who generates and sells or who has the ability to generate and sell electricity into the wholesale market. From this list, identify each FIPUG member who has market-based pricing authority.

5. Only IMC Phosphates' answer responds to this interrogatory. If IMC Phosphates is the only FIPUG member who generates or sells or who has the ability to generate and sell electricity in the wholesale market, FIPUG needs to so state. FIPUG apparently has not fully responded to Interrogatory No. 3 as Tampa Electric is aware of at least one additional FIPUG member who sells electric power at wholesale. Tampa Electric's Interrogatory No. 3 applies to every FIPUG member who generates and sells or who has the ability to generate and sell electric power in the wholesale market whether or not the FIPUG member is a customer of Tampa Electric.

Interrogatory No. 4

Interrogatory No. 4 reads as follows:

4. Identify each FIPUG member who has generated and sold electricity to Tampa Electric at any time since January 1, 1998. For each hour of the period January 1, 1998 to 2001

year-to-date that each FIPUG member sold electricity to Tampa Electric, please provide the following (for each member):

- a. Number of megawatt-hours sold
- b. Product type (capacity, energy, call option, must take, etc.)
- c. Selling price
- d. Seller's cost
- e. Seller's net revenue

6. FIPUG has flatly refused to respond to Interrogatory No. 4 claiming that Tampa Electric has the information it is requesting. The problem overlooked by FIPUG is the fact that Tampa Electric does not know who FIPUG's members are. There may be FIPUG members selling power to Tampa Electric who are not Tampa Electric's customers. Stated differently, Tampa Electric knows who it has purchased power from; what it does not know is whether the sellers are members of FIPUG. FIPUG has not stated any legal ground for its refusal to answer Interrogatory No. 4. Tampa Electric is entitled to a full and complete answer to this interrogatory.

Interrogatory No. 6

Interrogatory No. 6 read as follows:

6. For each hour identified in interrogatories 4 and 5 above, identify each instance where a FIPUG member concurrently received interruptible service and sold power into the wholesale market (at common or separate interconnect points). Provide the following for each hour:
 - a. Purchase price of interruptible service power
 - b. Price of power sold into the wholesale market

7. FIPUG does not answer the question posed in Interrogatory No. 6 which seeks information on instances where a FIPUG member concurrently received interruptible service and sold power into the wholesale power market. FIPUG simply states: "There were no wholesale sales" other than those identified "for FIPUG companies participating in the TECO fuel case."

Tampa Electric clearly is entitled to know whether or not there were instances of concurrent purchases and sales by any FIPUG company, not just FIPUG companies “participating in the TECO fuel case.”

8. In its response to Interrogatory No. 6 FIPUG restricts its response to “FIPUG companies participating in the TECO fuel case.” No such restriction is placed on the interrogatory. Tampa Electric is entitled to know the answer to this interrogatory without restricting that answer as FIPUG has done. Tampa Electric is entitled to know the identity of each FIPUG member participating in the competitive wholesale electric market whether or not a particular member purports to participate “in the TECO fuel case.” Tampa Electric has filed a Motion for Protective Order seeking to preclude the sharing of confidential proprietary Tampa Electric wholesale market power information with those FIPUG members who compete with Tampa Electric in the wholesale power market. The company is entitled to know who those FIPUG members are, regardless of whether they purport to “participate in the TECO fuel case.” If there are no other FIPUG members competing, FIPUG should so state without reference to the limitation it has imposed.

Interrogatory No. 8

Interrogatory No. 8 reads as follows:

8. Identify each FIPUG member who is a Tampa Electric interruptible service customer and who has not received a minimum of 99.5 Electric Service Availability (ESA) during each of the calendar years 1999 and 2000 and year to date 2001. (ESA is defined as Number of Hours in a Calendar Year that Electric Service was Available divided by Total Number of Hours in the Calendar year times 100%).

9. FIPUG’s answer to Interrogatory No. 8 is argumentative, evasive and redefines the question. The answer includes a mischaracterization of the buy through provision of Tampa

Electric's tariff as creating some agency relationship for retail wheeling which does not exist. In the next to the last sentence of its answer, IMC does appear to admit that IMC was capable of operating more than 99.5% of the time during the time frames listed, although even this admission is confusing because two sentences appear to be run together in this part of the answer.

10. FIPUG attempts to evade the question asked by restricting its answer to electric service "from Tampa Electric generated capacity." That limitation was not contained in the question. FIPUG should be required to answer the interrogatory without such a redefinition of the question asked.

Interrogatory No. 10

Interrogatory No. 10 reads as follows:

10. Identify each FIPUG member who is a Tampa Electric interruptible service customer and who has developed procedures for determining whether to buy through or be interrupted.

11. In its answer FIPUG simply states "See response to 1 and 2." This is a meaningless response because Interrogatories Nos. 1 and 2 do not seek the same information Tampa Electric is requesting in Interrogatory No. 10. FIPUG should be required to fully respond to Interrogatory No. 10 as posed by Tampa Electric. If it is FIPUG's intent that the FIPUG members listed in FIPUG's response to Interrogatories 1 and 2 are the only FIPUG members that fall within the description of Interrogatory No. 10, FIPUG should be required to so state.

Interrogatory No. 11

Interrogatory No. 11 reads as follows:

11. State FIPUG's understanding as to why the Florida Public Service Commission voted to close Tampa Electric's IS-1, IS-3, SBI-1 and SBI-3 rates for interruptible service.

12. In its response FIPUG flippantly states that the Commission voted to close the interruptible rate schedules simply because Tampa Electric requested the Commission to do so. This cute response is an insult to the integrity of the Commission and demonstrates that FIPUG does not take the discovery process seriously. FIPUG should be required to state its understanding of the real reason why the Commission concluded that the interruptible rate schedules listed should be closed.

Interrogatory No. 13

Interrogatory No. 13 reads as follows:

13. For each FIPUG member who is a Tampa Electric interruptible service customer with an affiliated power marketing entity:
 - a. Please identify the name, location, and net non-fuel revenue realized by such affiliated power marketing entity since January 1, 1998.
 - b. If such affiliated power marketing entity is authorized to sell power into the wholesale power market that was produced from the customer's Florida generating facilities, please identify the gross non-fuel revenue and net non-fuel revenue realized by the affiliated power marketing entity from such sales since January 1, 1998.

13. FIPUG qualifies its answer by saying "None that are participating in this case." Tampa Electric did not pose its interrogatory with such a restriction and is entitled to a response that includes each FIPUG member with an affiliated power marketing entity whether or not the FIPUG member is participating in this case. It is FIPUG, the organization, that is participating in this case. FIPUG should not be allowed to play a shell game with Tampa Electric and the Commission, disclosing only those members it finds convenient and keeping its remaining members secret. In addition, Tampa Electric is entitled to this information to protect itself and

its retail customers from the harm that would occur if confidential proprietary Tampa Electric wholesale marketing information is shared with Tampa Electric competitors in the wholesale power market. FIPUG should be required to take seriously the Rules of Civil Procedure or be dismissed from this proceeding.

As to Requests for Production of Documents Nos. 1-6

14. FIPUG objected to each and every Request for Production of Documents with what amounts to a conclusory rubber stamp claim that the documents requested either are trade secret or not relevant or calculated to lead to relevant evidence. FIPUG provides no detail in support of its self-serving conclusions. In one instance, in its objection to Request for Production No. 5, FIPUG claimed that board minutes are privileged attorney/client work product without any explanation of how the board minutes are privileged. In addition, FIPUG does not comply with the requirements of the Florida Rules of Civil Procedure that apply when a party withholds information otherwise discoverable by claiming that it is privileged.

15. FIPUG's unsubstantiated summary refusal to respond to any of Tampa Electric's Requests for Production of Documents is wholly inadequate and FIPUG should be compelled to produce the documents requested.

Request for Expedited Motion Hearing

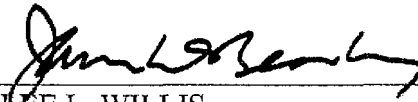
16. The information FIPUG has withheld from Tampa Electric is directly relevant to the issues in this case and essential if Tampa Electric is to protect itself and its customers from the inadvertent disclosure of confidential proprietary business information regarding its participation in the wholesale power market to FIPUG members and member affiliates who will use that information to the significant detriment of Tampa Electric and its customers. Tampa

Electric requests the Prehearing Officer schedule a motion hearing immediately to resolve these outstanding discovery issues.

WHEREFORE, Tampa Electric respectfully urges that this Motion be set for immediate hearing and that an order be entered compelling FIPUG to immediately respond to Tampa Electric's discovery requests as set forth above.

DATED this 1st day of August 2001.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Compel, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (*) or U. S. Mail on this 15th day of August, 2001 to the following:

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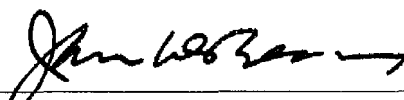
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