

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause and generating
performance incentive factor.

Docket No. 030001-EI
Filed: October 31, 2003

**The Florida Industrial Power Users Group's
Motion to Compel Tampa Electric Company**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, files this Motion to Compel Tampa Electric Company (TECo) to provide FIPUG with unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47). In support of its motion, FIPUG states:

Introduction

1. On September 19, 2003, TECo served its answers to Staff's Fifth Set of Interrogatories (Nos. 43-47). These interrogatories address capacity contracts for which associated costs and revenues are included in TECo's cost recovery filings. Such information is directly relevant to TECo's request in this proceeding to collect the payments for these contracts from ratepayers.¹ A confidential version of the interrogatory answers was filed with the Commission and FIPUG was served with a completely redacted version of the answers. (Attachment A).

2. On October 27, 2003, FIPUG contacted counsel for TECo and requested an unredacted copy of TECo's answers to Staff's Fifth Set of Interrogatories. At that time, TECo's counsel said it would allow only FIPUG's attorney to inspect the answers under cover of confidentiality or take custody of a nonconfidential version of the answers that provided only

¹ As this Commission is aware, the scope of discovery is broad. *See Allstate v. Boecher*, 733 So. 2d 993, 995 (Fla. 1999). TECo made no objection when Staff sought this information. As a party to this case, FIPUG is equally entitled to review the information.

DOCUMENT NUMBER 03-0001-EI

10844 OCT 31 2003

FPSC-COMMISSION STAFF

aggregate information and redacted all other information, including the contract counter parties, contract expiration dates, and the month-by-month information regarding the capacity contracts that were the subject of the interrogatories. TECo refused to provide a copy of the unredacted answers to FIPUG, even though it agreed to be bound by a non-disclosure agreement.

3. On October 30, 2003, counsel for FIPUG again contacted TECo's attorney in an attempt to obtain the unredacted answers. FIPUG reiterated that it would agree to enter into a non-disclosure agreement with TECo to protect the confidentiality of the information contained in the answers, and further agreed that such information would be reviewed only by FIPUG's outside consultant, Ms. Brown, and FIPUG counsel. On October 30, 2003, counsel for TECo refused to provide the requested interrogatory answers.

Argument

4. TECo has absolutely no basis for refusing to provide the requested information. FIPUG's attorneys have repeatedly made clear that the information will be reviewed only by FIPUG's attorneys and expert witness who agree to be bound by an appropriate non-disclosure agreement. FIPUG has agreed not to provide the information to individual FIPUG members. FIPUG has offered more than adequate protection for the confidentiality of the information; TECo's refusal to produce it is patently unreasonable and has no basis in law.

5. In discussion, TECo's attorney has stated that FIPUG has not provided an adequate explanation for why its expert witness needs the discovery information. However, FIPUG is not required to reveal its trial strategy to TECo to receive relevant discovery answers. In fact, pursuant to rule 1.280(b)(3), Florida Rules of Civil Procedure, mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation are specifically protected from disclosure. Further, TECo previously

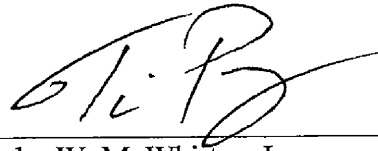
provided the discovery answers in question to the Commission Staff without objection. The interrogatory answers at issue are relevant to the issues in this proceeding inasmuch as they discuss capacity contracts for which associated costs and revenues are included in TECo's cost recovery filings.

6. Given the reasonableness of FIPUG's request, and its willingness to provide adequate protection of the information, there can only be one explanation for TECo's lack of cooperation: to unreasonably delay FIPUG's ability to prepare for trial. Given the proximity to the hearing in this case (less than two weeks), even the slightest delay greatly prejudices FIPUG's ability to prepare its case for presentation to the Commission.

7. Further, TECo's meritless refusal to provide relevant discovery has caused FIPUG to expend time and resources on preparation of this motion on the eve of trial.

WHEREFORE, the Commission should:

1. Order TECo to immediately provide FIPUG with the unredacted answers to Staff's Fifth Set of Interrogatories;
2. Strike all testimony and exhibits related to such discovery if TECo fails to comply; and
3. Award FIPUG the attorney fees incurred in preparation of this motion.



John W. McWhirter, Jr.
McWhirter Reeves McGlothlin Davidson
Kaufman & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33601-3350

Vicki Gordon Kaufman
Timothy J. Perry
McWhirter Reeves McGlothlin Davidson
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Industrial
Power Users Group

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and Purchased Power)	DOCKET NO. 030001-EI
Cost Recovery Clause with)	FILED: September 19, 2003
Generating Performance Incentive)	
Factor)	

REDACTED VERSION

**TAMPA ELECTRIC COMPANY'S
ANSWERS TO FIFTH SET OF INTERROGATORIES (NOS. 43-47)
OF
THE FLORIDA PUBLIC SERVICE COMMISSION**

Tampa Electric files this its Answers to Interrogatories (Nos. 43-47) propounded and served on August 15, 2003, by the Florida Public Service Commission.

**SEP 22 2003
RECEIVED**

**TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
INDEX TO STAFF'S 5TH SET OF INTERROGATORIES (NOS. 43-47)**

<u>Number</u>	<u>Sponsor</u>	<u>Subject</u>	<u>Bates Stamped</u>
43	Jordan	Tampa Electric's capacity contracts for which associated costs and revenues are included in Tampa Electric's August, 2003, estimated/actual filing in Docket No. 030001-EI.	58
44	Jordan	Tampa Electric's capacity contracts for which associated costs and revenues will be included in Tampa Electric's September, 2003, projection filing in Docket No. 030001-EI.	61
45	Jordan	Tampa Electric's capacity contracts for which capacity costs are recovered through Tampa Electric's base rates.	64
46	Jordan	All 2003 costs and revenues, other than those associated with the capacity contracts identified in response to Interrogatories Nos. 43-44.	65
47	Jordan	All 2004 costs and revenues, other than those associated with the capacity contracts identified in response to Interrogatories Nos. 43-44.	66

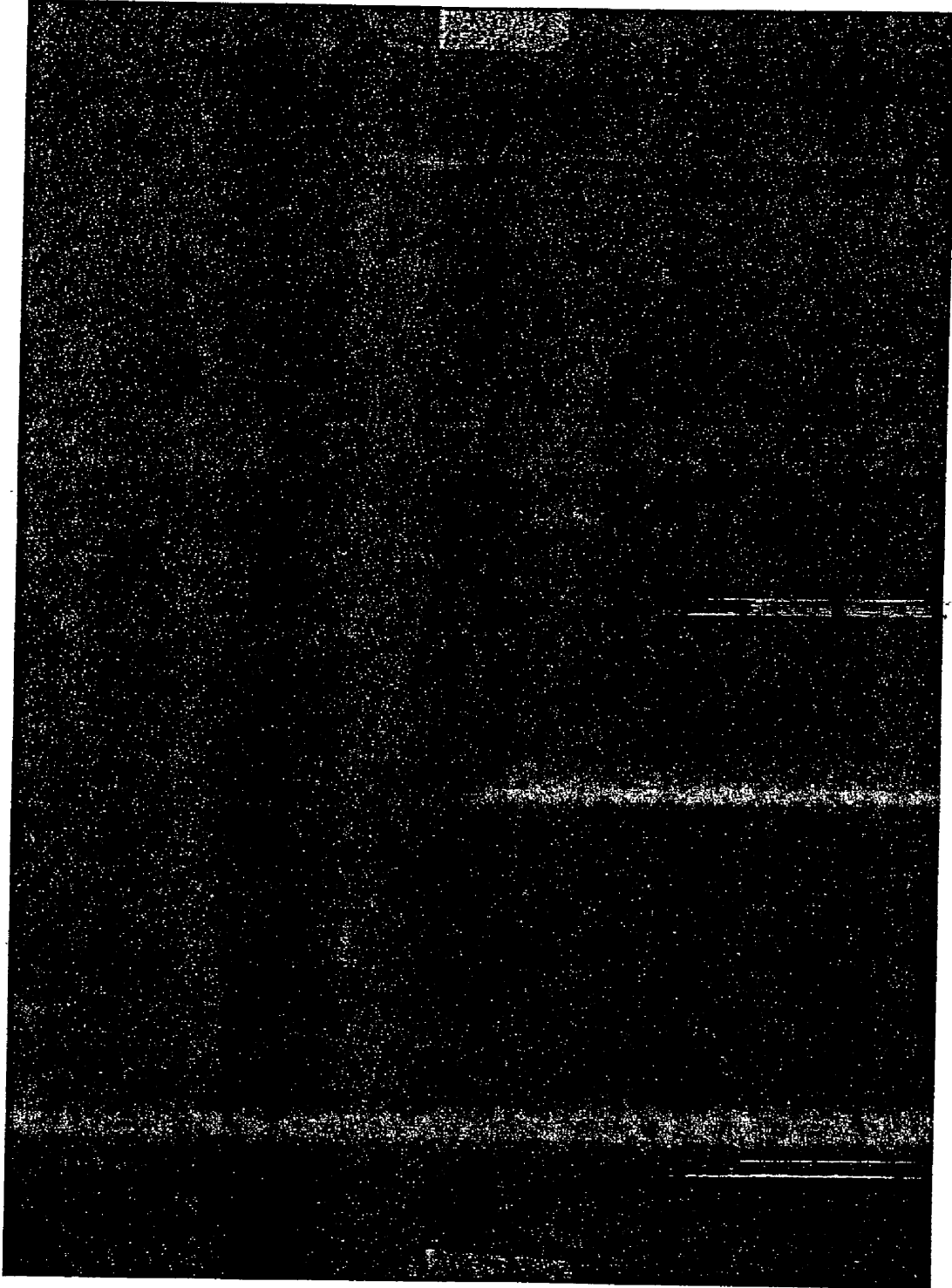
Sponsor:

J. Denise Jordan
Director, Regulatory Affairs
Tampa Electric Company
702 N. Franklin Street
Tampa, FL 33602

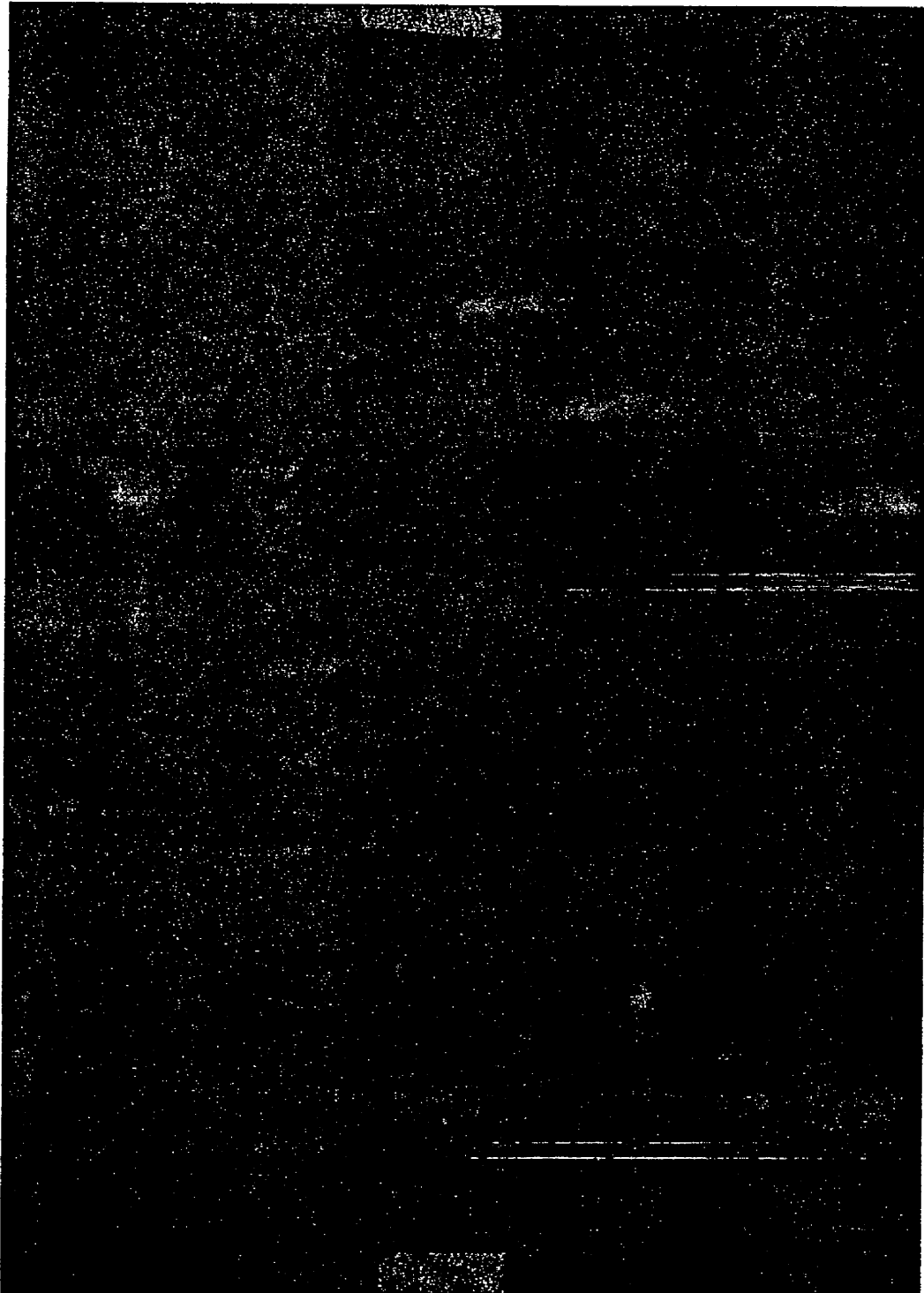
TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 43
PAGE 1 OF 3
FILED: SEPTEMBER 19, 2003

43. For each of Tampa Electric's capacity contracts for which associated costs and revenues are included in Tampa Electric's August, 2003, estimated/actual filing in Docket No. 030001-EI, please provide the following:
- a. Name of contract counter party and identification of contract counter party as a QF/Cogeneration facility, utility affiliate, or other entity;
 - b. Contract end (expiration) date; and
 - c. Capacity, in MW and dollars, purchased (or sold) and projected to be purchased (or sold) under each individual contract during each month, from January through December 2003.
- A.
- a. See the tables on the following pages.
 - b. See the tables on the following pages.
 - c. See the tables on the following pages.

TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 43
PAGE 2 OF 3
FILED: SEPTEMBER 19, 2003

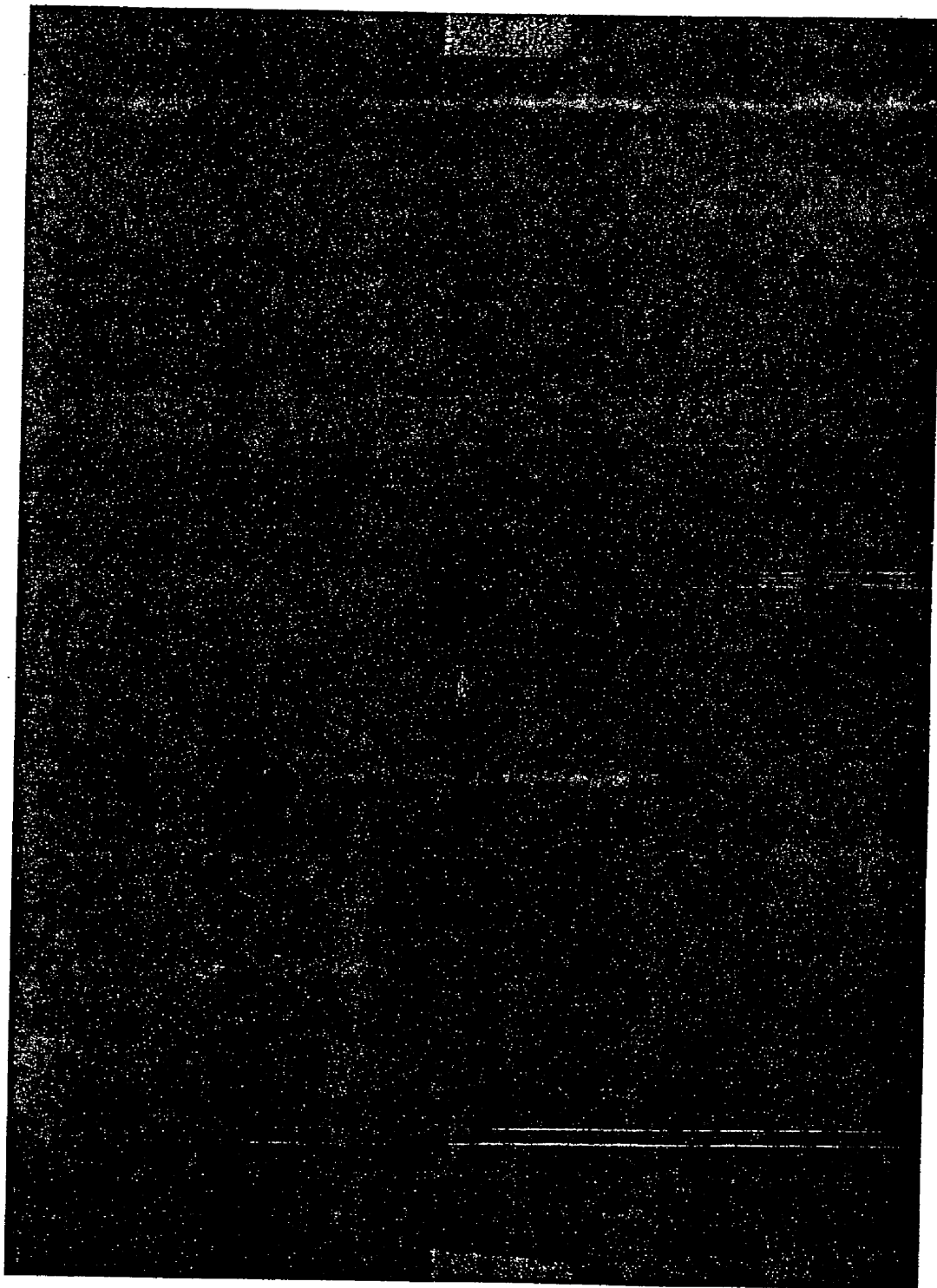


TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 43
PAGE 3 OF 3
FILED: SEPTEMBER 19, 2003

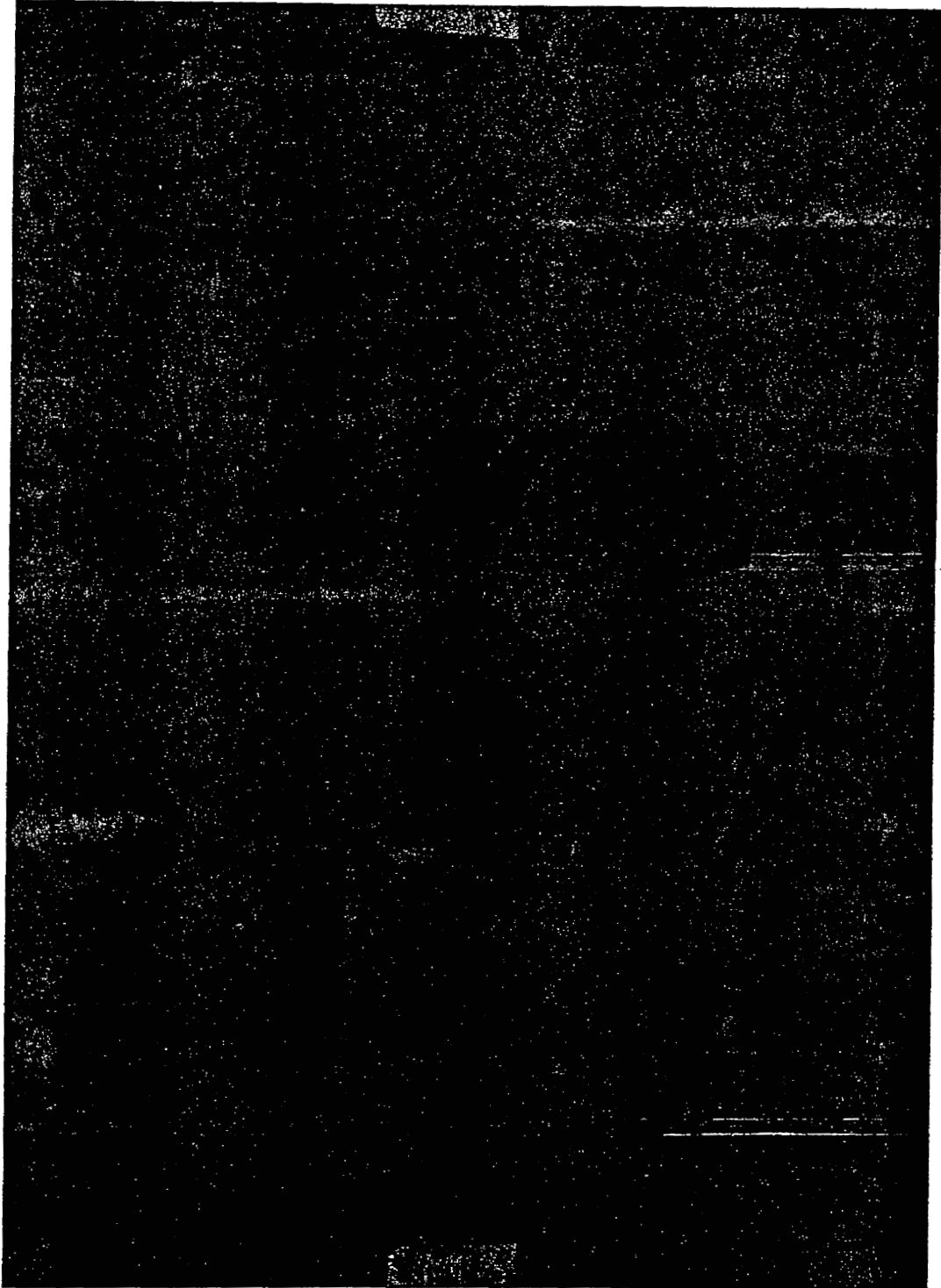


44. For each of Tampa Electric's capacity contracts for which associated costs and revenues will be included in Tampa Electric's September, 2003, projection filing in Docket No. 030001-EI, please provide the following:
- a. Name of contract counter party and identification of contract counter party as a QF/Cogeneration facility, utility affiliate, or other entity;
 - d. Contract end (expiration) date; and
 - d. Capacity, in MW and dollars, projected to be purchased (or sold) under each individual contract during each month from January through December 2004.
- A.
- a. See the tables on the following pages.
 - b. See the tables on the following pages.
 - c. See the tables on the following pages.

TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 44
PAGE 2 OF 3
FILED: SEPTEMBER 19, 2003



TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 44
PAGE 3 OF 3
FILED: SEPTEMBER 19, 2003



TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 45
PAGE 1 OF 1
FILED: SEPTEMBER 19, 2003

45. Please identify each of Tampa Electric's capacity contracts for which capacity costs are recovered through Tampa Electric's base rates. Please provide the costs recovered through base rates that are associated with each such contract.
- A. Tampa Electric has no capacity contracts for which capacity costs are recovered through base rates.

TAMPA ELECTRIC COMPANY
DOCKET NO. 030001-EI
STAFF'S 5th SET OF INTERROGATORIES
INTERROGATORY NO. 46
PAGE 1 OF 1
FILED: SEPTEMBER 19, 2003

46. Please identify and describe all 2003 costs and revenues, other than those associated with the capacity contracts identified in response to Interrogatories Nos. 43-44, above, that Tampa Electric intends to recover or credit through the capacity cost-recovery clause. Please identify each item as: (1) a transportation and transmission cost or revenue; (2) a security cost; or (3) any other cost or revenue (please specify).

A. See Tampa Electric's response to Interrogatory No. 43 for itemized transmission and ancillary revenue amounts. As previously shown in the direct testimony of Tampa Electric witness J. Denise Jordan, filed August 12, 2003, Tampa Electric's security costs are shown in the table below.

Security Costs		
2003		
January	Actual	\$0
February	Actual	\$0
March	Actual	\$0
April	Actual	\$63,157
May	Actual	\$37,397
June	Actual	\$32,763
July	Projected	\$8,950
August	Projected	\$8,950
September	Projected	\$8,950
October	Projected	\$8,950
November	Projected	\$8,950
December	Projected	\$8,950
Total		\$187,017

47. Please identify and describe all 2004 costs and revenues, other than those associated with the capacity contracts identified in response to Interrogatories Nos. 43-44, above, that Tampa Electric projects it will recover or credit through the capacity cost recovery clause. Please identify each item as: (1) a transportation and transmission cost or revenue; (2) a security cost; or (3) any other cost or revenue (please specify).
- A. See Tampa Electric's response to Interrogatory No. 44 for itemized transmission and ancillary revenue amounts. As previously shown in the direct testimony of Tampa Electric witness J. Denise Jordan, filed September 12, 2003, Tampa Electric's security costs are shown in the table below.

Security Costs		
2004		
January	Projected	\$10,000
February	Projected	\$10,000
March	Projected	\$10,000
April	Projected	\$10,000
May	Projected	\$10,000
June	Projected	\$10,000
July	Projected	\$10,000
August	Projected	\$10,000
September	Projected	\$10,000
October	Projected	\$10,000
November	Projected	\$10,000
December	Projected	\$10,000
Total		\$120,000

A F F I D A V I T

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

Before me the undersigned authority personally appeared Brenda L. Irizarry who deposed and said that she is Regulatory Coordinator, Tampa Electric Company, and that the individuals listed in Tampa Electric Company's response to Staff's Fifth Set of Interrogatories, (Nos. 43 - 47), prepared or assisted with the responses to these interrogatories to the best of her information and belief.

Dated at Tampa, Florida this 18th day of September, 2003.

Brenda L. Irizarry

Sworn to and subscribed before me this 18th day of September, 2003.

Angela Lynn Llewellyn



My Commission expires _____

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Motion to Compel Tampa Electric Company has been furnished by (*) hand delivery, or U.S. Mail this 31st day of October 2003, to the following:

(*)Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Rob Vandiver
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

John T. Butler
Steel Hector & Davis LLP
200 S. Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2398

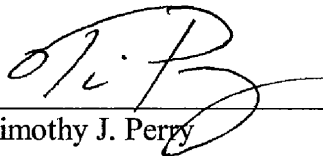
(*) Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32591

James A. McGee
100 Central Avenue, Suite CX1D
St. Petersburg, Florida 33701

Norman H. Horton
Messer, Caparello & Self
215 South Monroe Street
Suite 701
Tallahassee, Florida 32302

John T. English
Florida Public Utilities Company
Post Office Box 3395
West Palm Beach, Florida 33402



Timothy J. Perry