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December 1, 2003

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VIA HAND DELIVERY

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

Re: Docket No.: 030001-EI

Dear Ms. Bayo:

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

- ▶ The Florida Industrial Power Users Group's Response in Opposition to Tampa Electric Company's Request for Confidential Classification.

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

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Sincerely,

Timothy J. Perry

VGK/bae
Enclosure

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A.

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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. 030001-EI
Filed: December 1, 2003

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, files its response to Tampa Electric Company's (TECo) Request for Confidential Classification of certain highlighted information in the revised direct testimony of Sheree L. Brown. The information should not be exempt from disclosure pursuant to Chapter 119, Florida Statutes. In support thereof, FIPUG states:

1. TECo states that in its request that the information should be protected from public disclosure pursuant to paragraphs 366.093(3)(d) and (e), Florida Statutes. These subsections relate to exemptions from public disclosure for “[i]nformation concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms” and “[i]nformation relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information,” respectively. However, TECo has failed to show that the highlighted portions contain bid or contractual information that, if disclosed, will impair TECo or its affiliates’ ability to contract for goods or services on favorable terms, or information that if disclosed would impair TECo’s competitive interests.

2. TECo’s only justification for seeking confidentiality of the highlighted information is its allegation that the information reveals “details of the very recent daily operation of Tampa Electric’s business and . . . strategic planning activities.” TECo argues that

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disclosure of the information “could” impact agreements or contract negotiations that TECo may attempt to enter in the near future. TECo provided an example how disclosure “could” result in increased cost of service because contractors would consider TECo’s budget information when bidding to provide services. However, budget information is just that — a budget, or predictor of what may or may not actually occur. TECo has failed to show any link between this information and its ability to contract on favorable terms or impairment of competitive interests.

3. TECo’s scant justification is not sufficient to satisfy the burden for exempting the information from disclosure pursuant to § 119.07, Florida Statutes. *See Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001). With regards to the burden, the court in *Dade Aviation* stated:

Chapter 119, the Public Records Act ["Act"] affords the public access to certain government documents. § 119.01, .07(3), Fla. Stat (2000). The Act is to be construed liberally in favor of openness. *Woolling v. Lamar*, 764 So. 2d 765 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001). When there is any doubt, the court should find in favor of disclosure. *City of St. Petersburg v. Romine*, 719 So. 2d 19, 21 (Fla. 2d DCA 1998). The only records that are exempt from production under the Act are those that are so delineated by the statute or those that are expressly exempted by general or special law. § 119.07(3), Fla. Stat. (2000); *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979); *Miami Herald Pub. Co. v. City of North Miami*, 452 So. 2d 572 (Fla. 3d DCA 1984).

Id. TECo has not overcome the Public Records Act’s liberal presumption in favor of disclosure.

4. Much of the information that TECo seeks confidentiality for relates to projected budget amounts for O&M at the Gannon Station in 2003 and 2004. TECo fails to explain how disclosure of the 2003 estimated O&M information would harm TECo, considering that most, if not all, of these expenses already have been incurred on an actual basis. Further, TECo provided similar, detailed information regarding the projected O&M expenses to operate Gannon units 1-4

through December 2004, without seeking confidential treatment, in Exhibit WTW-2.

5. The remainder of the highlighted information for which TECo requests confidential treatment contains estimates of dead freight charges and coal contract penalties resulting from the Gannon shutdown. TECo does not explain how disclosure of this information could possibly harm TECo. In fact, it is difficult to understand how the information could harm TECo since TECo has testified that these charges no longer apply. *See* Hearing Transcript in Docket 030001-EI at 748-49.

6. TECo has failed to justify why the information in its request should be protected from disclosure. TECo has failed to overcome the presumption in favor of public disclosure in chapter 119, therefore confidential treatment should not be granted.

WHEREFORE, the Commission should deny TECo's Request for Confidential Classification



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Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Response in Opposition to Tampa Electric Company's Request for Confidential Classification has been furnished by (*) hand delivery, or U.S. Mail this 1st day of December, 2003, to the following:

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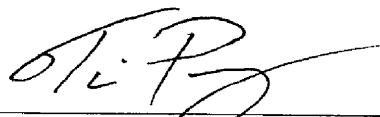
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