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December 22, 2003

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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COMMISSION
CLERK

RE: Docket No. 031033-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Office of Public Counsel's and the Florida Industrial Power Users Group (FIPUG), Joint Motion to Establish Appropriate Hearing Schedule to Tampa Electric Company.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

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FPSC-BUREAU OF RECORDS

Robert Vandiver
Associate Public Counsel

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterbound transportation
contract with TECo transport and trade

Docket No. 031033-EI

Filed: December 22, 2003

JOINT MOTION TO ESTABLISH APPROPRIATE HEARING SCHEDULE

The Citizens of the State of Florida (Citizens) and the Florida Industrial Power Users Group (FIPUG), (collectively, Joint Movants), pursuant to rule 28-106.204, Florida Administrative Code, file this Joint Motion to Establish Appropriate Hearing Schedule. As grounds therefore, Movants state:

1. In Order No. PSC-03-1359-PCO-EI, over Tampa Electric Company's (TECo) protests, this Commission deferred three critical issues concerning the prudence of TECo's purchase of waterborne coal transportation services from the annual fuel proceeding to a separate proceeding "to allow for a more thorough review of the issues." *Id.* at 6. The Commission noted that:

[W]e find that additional time to review the issues concerning Tampa Electric Company's coal transportation arrangements is appropriate because it would allow both this Commission and the parties the opportunity to more fully evaluate the market rate analysis that Tampa Electric Company has offered to serve as the basis for the cost of waterborne coal transportation services to be charged to customers over the next five years. *Id.* at 5.

2. Pursuant to the articulated desire of the full Commission to afford Movants an opportunity to engage in a thorough review of the complex issues, Chairman Jaber on December 1, 2003 approved a Case Assignment and Scheduling Record (CASR). The CASR provided that Company testimony would be filed on February 12, 2004; intervenor testimony would be filed on March 25, 2004; and a hearing was scheduled for May 26-27

2004. Given the complex matters at issue in the case, this was an ambitious schedule, but one which the Movants perceived to be reasonable.

3. On December 11, 2003, without notice to the affected Movants, the schedule was inexplicably accelerated, and the hearing was moved to April 13-14, 2003. Thus, Movants have been deprived of a full six weeks of preparation time. No explanation was provided for this drastic change in schedule.

4. Movants submit that this schedule change is highly prejudicial to their ability to prepare for hearing in this matter. As the Commission may be aware, the cornerstone of TECo's case appears to be based on a model which generates proxy costs which TECo seeks to use as a basis for recovery of costs from retail ratepayers. This model is claimed to be the proprietary property of TECo's consultant and thus far, despite discovery requests, has not been provided to Movants.¹ The Citizens and FIPUG have sent extensive discovery to TECo regarding the model, to which TECo has objected.² At this point, TECo has all the information pertinent to this case, has had it since the fuel adjustment proceeding, and apparently is unwilling to provide it.

5. In contrast, there is absolutely no prejudice to TECo if the original hearing dates (or later hearing dates) are restored. TECo has told the Commission that it is recovering *more* under its current transportation contract than under the new contract which it has signed with its affiliate. Thus, it is not prejudiced by a hearing date which allows for more thorough discovery and preparation.

¹ The Commission itself expressed concern about TECo's failure to provide the model to affected parties: "We also note with some concern the reluctance of Tampa Electric and witness Dibner, as expressed in deposition, to provide these proprietary models for review." Order No. PSC-03-1359-PCO-EI at 5.

² See, TECo's objections to FIPUG's 1st Set of Discovery, filed December 15, 2003. At a meeting held on December 17, 2003, TECo stated it was attempting to work with Mr. Dibner to authorize release of the model. Thus far that has not occurred.

6. Under Florida administrative law, substantially affected parties are entitled to an effective point of entry into the administrative process.

7. An effective point of entry into the administrative process demands that Movants have adequate time to retain independent experts, to be guided by their opinions, to distill their opinions to prefiled testimony, and to test the Company's case by means of thorough and comprehensive discovery. Although the schedule enunciated in the original CASR was extremely ambitious, it was one which provided the Movants an effective point of entry into the administrative process and it gave effect to the full Commission's desire to afford Movants time to thoroughly review the issues. The dollars at stake in this case are significant as is the five-year time frame for the affiliate contract at issue. Time for a thorough review should be permitted.

8. Order PSC-03-1398-PCO-EI is contrary to and frustrates the view of the full Commission as earlier expressed in Order PSC-03-1359-PCO-EI and as further given effect in the referenced CASR approved by Chairman Jaber.

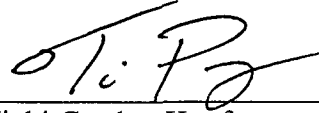
9. Order No. PSC-03-1398-PCO-EI has the effect of depriving Movants of an effective point of entry into the administrative process and the ability to conduct a thorough review of the important issues in this docket.

10. Time being of the essence, Movants urge that the Commission grant this motion as expeditiously as possible.

11. Movants are advised that Tampa Electric Company will oppose this motion.

WHEREFORE, Joint Movants, The Citizens of the State of Florida and the Florida Industrial Power Users Group move this Commission to restore the original schedule set out in the CASR issued on December 1, 2003.

Respectfully submitted,



for _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing Joint Motion to Establish Appropriate Hearing Schedule has been furnished by U.S. Mail or *hand-delivery this 22nd day of December, 2003:

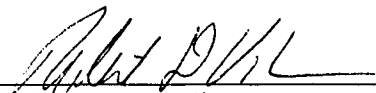
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