

ORIGINAL

**MCWHIRTER REEVES**  
ATTORNEYS AT LAW

RECEIVED-FPSC

TAMPA OFFICE:  
400 NORTH TAMPA STREET, SUITE 2450  
TAMPA, FLORIDA 33602  
P. O. BOX 3350 TAMPA, FL 33601-3350  
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:  
  
TALLAHASSEE

04 FEB -9 PM 4: 34  
TALLAHASSEE OFFICE:  
117 SOUTH GADSDEN  
TALLAHASSEE, FLORIDA 32301  
(850) 222-2525  
(850) 222-5606 FAX  
COMMISSION  
CLERK

February 9, 2004

**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.: 031033-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 TECo's Requests 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.

Sincerely,



Timothy J. Perry

VGK/bae  
Enclosure

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC 1
- OTH eg to

*Marguerite*

RECEIVED & FILED

*Sh*  
FPSC-BUREAU OF RECORDS

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

DOCUMENT NUMBER-DAT

01861 FEB-9 9

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Review of Tampa Electric Company's  
2004-2008 waterborne transportation contract  
with TECo Transport and associated benchmark.

---

Docket No.: 031033-EI  
Filed: February 9, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S RESPONSE IN  
OPPOSITION TO TECO'S REQUESTS FOR CONFIDENTIAL CLASSIFICATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, responds in opposition to Tampa Electric Company (TECo) Requests for Confidential Classification filed January 26, 2004. FIPUG requests that the Commission enter an order denying TECo's requests as discussed below. As grounds therefore, FIPUG states:

**Exhibit BD-1**

1. TECo has requested confidential classification for Exhibit BD-1 in its entirety. TECo asserts that the information contained in the document is the proprietary work product of Dibner Maritime Associates (DMA), disclosure of which "could allow duplication of the consultant's work." TECo alleges that the document is in the nature of a trade secret owned by DMA. Further, TECo alleges that disclosure of the information contained in the document would impair DMA's competitive business interests by diminishing the demand for DMA's work product.

2. Contrary to TECo's assertions, much of the information contained in Exhibit BD-1 does not appear to meet the description of the information provided in TECo's confidentiality request. For instance, much of Exhibit BD-1 contains information either compiled from public sources or of such a general nature as to not be proprietary. Accordingly, FIPUG requests that the Commission deny confidential classification to, at a minimum, the following Bates Stamp pages of Exhibit BD-1: 53-76, 78-79, 85-87, 98, 101, 103-15, 121-25, 128-130. In addition,

FIPUG requests that to the extent the Commission finds that a page of the exhibit contains a mix of proprietary and non-proprietary information, the Commission deny confidential classification to the non-proprietary information only.

**TECo's Responses to Public Counsel's First Set of Interrogatories**

3. TECo has requested confidential classification for Bates Stamp page numbers 6–11 provided in response to Public Counsel's Interrogatory No. 4. TECo asserts that the information contained therein is the proprietary work product of Dibner Maritime Associates (DMA), disclosure of which "could allow duplication of the consultant's work." TECo alleges that the information is in the nature of a trade secret owned by DMA. Further, TECo alleges that disclosure of the information would impair DMA's competitive business interests by diminishing the demand for DMA's work product.

4. FIPUG requests that TECo's request be denied as to Bates Stamp page numbers 6–11. TECo states in the non-confidential portion of its answer to Interrogatory No. 4 that the information contained on pages 6–11, "does not represent the Mr. Dibner's model, which is much more detailed, but it presents, in a straightforward manner, a market price calculation for the movement of coal from a location on the Ohio River to Davant, Louisiana." To the extent that the calculation described on pages 6–11 is a matter of common practice in the industry, hence in the public domain, FIPUG requests that the Commission deny TECo's request.

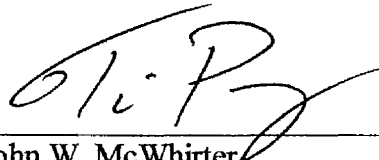
**TECo's Responses to FIPUG's First Set of Interrogatories**

5. TECo has requested confidential classification for Bates Stamp page numbers 5–10 provided in response to FIPUG's Interrogatory No. 4. TECo's response to Interrogatory No. 4 is identical to Bates Stamp page numbers 6–11 provided in response to Public Counsel's

Interrogatory No. 4. TECo requests that the Commission deny TECo's request and hereby incorporates the argument set forth in paragraphs 3 and 4, above.

6. TECo has requested confidential classification for Bates Stamp page numbers 34 and 35. TECo alleges that the information contains contractual information, disclosure of which would be harmful to TECo Transport. FIPUG requests that the Commission deny TECo's request. TECo has failed to demonstrate how disclosure of the information could harm TECo Transport.

**WHEREFORE**, FIPUG's requests that the Commission enter an order denying TECo's Requests for Confidential Classification.



---

John W. McWhirter  
McWhirter, Reeves, McGlothlin, Davidson,  
Kaufman, & Arnold, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33602  
Telephone: (813) 224-0866  
Telecopier: (813) 221-1854  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

Vicki Gordon Kaufman  
Timothy J. Perry  
McWhirter, Reeves, McGlothlin, Davidson,  
Kaufman, & Arnold, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
(850) 222-2525 (telephone)  
(850) 222-5606 (fax)  
[vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)  
[tperry@mac-law.com](mailto:tperry@mac-law.com)

Attorneys for Florida Industrial Power Users Group

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Response in Opposition to TECo's Requests for Confidential Classification has been furnished by (\*) hand delivery, or U.S. Mail this 9th day of February 2004, to the following:


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

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

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

R. Sheffel Wright  
Landers & Parsons  
301 West College Avenue  
Tallahassee, Florida 32301

Mike Twomey  
Post Office Box 5256  
Tallahassee, Florida 32314-5256

  
\_\_\_\_\_  
Timothy J. Perry