

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 030001-EI
ORDER NO. PSC-03-1262-PCO-EI
ISSUED: November 7, 2003

ORDER GRANTING MOTION TO COMPEL TAMPA ELECTRIC COMPANY
TO PROVIDE FLORIDA INDUSTRIAL POWER USERS GROUP WITH
UNREDACTED ANSWERS TO STAFF'S FIFTH SET OF
INTERROGATORIES (NOS. 43-47)

On October 31, 2003, the Florida Industrial Power Users Group (FIPUG) filed a Motion to Compel Tampa Electric Company (Tampa Electric) to provide it with unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47). In the alternative, FIPUG requests that the Prehearing Officer strike all testimony and exhibits related to such discovery if Tampa Electric fails to comply. Further, FIPUG requests that the Prehearing Officer award it the attorney fees incurred in preparation of its motion. On November 4, 2003, Tampa Electric filed a response opposing FIPUG's Motion to Compel.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case" Based upon this authority, and having considered the Motion and Response, the rulings are set forth below.

FIPUG states that on September 19, 2003, Tampa Electric served a confidential version of its answers to Staff's Fifth Set of Interrogatories (Nos. 43-47) with the Commission and Tampa Electric served a completely redacted version of the answers to FIPUG. FIPUG states that the interrogatories address capacity contracts for which associated costs and revenues are included in Tampa Electric's cost recovery filings. FIPUG asserts that this information is directly relevant to Tampa Electric's request in this proceeding to collect payments for these contacts from ratepayers. FIPUG states that Tampa Electric refused to provide it with an unredacted version of the interrogatory answers when FIPUG requested it on October 27, 2003, and on October 30, 2003,

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even though FIPUG agreed to be bound by a non-disclosure agreement. FIPUG argues that Tampa Electric has no basis for refusing to provide the requested information. According to FIPUG, it has made clear that the information will be reviewed only by FIPUG's attorneys and expert witnesses who agree to be bound by an appropriate non-disclosure agreement. FIPUG states that it has agreed not to provide the information to individual FIPUG members. FIPUG argues that Tampa Electric's lack of cooperation is to unreasonably delay FIPUG's ability to prepare for trial. FIPUG asserts that Tampa Electric's meritless refusal to provide relevant discovery has caused it to expend time and resources on preparation of its Motion to Compel on the eve of trial.

Tampa Electric responds that it opposes FIPUG's Motion to Compel. Tampa Electric states that FIPUG's Motion seeks customer specific information with respect to cogenerators or independent power producers (IPPs) which supply energy to Tampa Electric. According to Tampa Electric, it has a duty to protect customer specific information from disclosure to other customers, particularly where it could be a request for information to be used for purposes unrelated to this proceeding. Tampa Electric states that it agreed to provide a non-confidential version of the answers that provided aggregate information with redacted customer specific information with respect to identification of customer names, contract expiration dates and month-by-month information regarding capacity contracts. Tampa Electric asserts that the Motion to Compel could be to advantage FIPUG's members in matters unrelated to this proceeding. Tampa Electric further asserts that the requested disclosure would disclose confidential proprietary information of one group of Tampa Electric customers to another group of Tampa Electric customers for what it believes could be an ulterior motive. According to Tampa Electric, counsel for FIPUG's offer to enter into a non-disclosure agreement is insufficient because such counsel has acted in the past as a negotiator for individual members in negotiating contracts with Tampa Electric. Further, Tampa Electric states that the disclosure of the requested information to FIPUG will harm other customers of Tampa Electric.

Upon review of the pleadings and consideration of the arguments, FIPUG's Motion to Compel is granted. Tampa Electric

shall provide FIPUG with unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47) by 9:00 a.m. on November 10, 2003. The information shall be reviewed only by FIPUG's attorneys and expert witnesses who agree to be bound by an appropriate non-disclosure agreement. FIPUG's request for attorney fees incurred in preparation of its motion is denied.

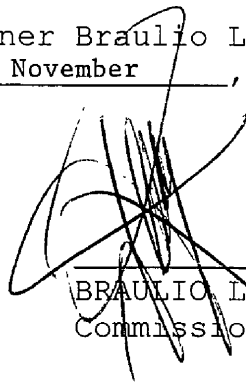
It is therefore,

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that FIPUG's Motion to Compel Tampa Electric to provide it with unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47) is granted. It is further

ORDERED that Tampa Electric shall provide FIPUG with unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47) by 9:00 a.m. on November 10, 2003. It is further

ORDERED that Tampa Electric's unredacted answers to Staff's Fifth Set of Interrogatories (Nos. 43-47) shall be reviewed only by FIPUG attorneys and expert witnesses who agree to be bound by an appropriate non-disclosure agreement.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 7th day of November, 2003.

 for Commissioner Braulio L Baez

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.