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June 30, 1997

VIA HAND DELIVERY

Blanca S. Bayo, Director
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Drive
Gerald L. Gunter Building
Tallahassee, Florida 32399-0850

Re: FMPA/Lakeland - Docket No. 970171-EU

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Response to Tampa Electric Company's Motion for Protective Order in the above docket.

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

ACK 2
AFA 2 Sincerely,

APP _____
CAF _____ *Vicki Gordon Kaufman*
CMU _____ Vicki Gordon Kaufman

CTR _____
EAC 5 VGK/pw
ENC 1 Enclosures

REG _____
LIN 5
CFC _____
RPT _____
SEC 1
WAS _____
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RECEIVED & FILED
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REGISTRATION OFFICE

DOCUMENT NUMBER-DATE
06557 JUN 30
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REGISTRATION

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of)
appropriate cost allocation)
and regulatory treatment of)
total revenues associated)
with wholesales to Florida)
Municipal Power Agency and)
City of Lakeland by Tampa)
Electric Company.)
_____)

Docket No. 970171-EU

Filed: June 30, 1997

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S RESPONSE
TO TAMPA ELECTRIC COMPANY'S MOTION FOR PROTECTIVE ORDER**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 1.280, Florida Rules of Civil Procedure and rule 25-22.037, Florida Administrative Code, hereby responds to Tampa Electric Company's (TECO) motion for protective order. TECO's motion should be denied. As grounds therefor, FIPUG states:

1. In this docket, TECO seeks to conceal information it relies upon to prove its case from the public at large and even from a party in the case.

2. TECO has entered into a four-year contract (1997-2001) with the Florida Municipal Power Agency (FMPA) to sell energy in the wholesale market at a guaranteed energy price, including fuel ranging from \$15.36/mwh to \$19.55/mwh for power provided twenty-four hours a day. It has entered into a second ten-year contract (1997-2006) to sell power to the City of Lakeland at a guaranteed energy price ranging from \$17.36/mwh to \$17.36/mwh. The Lakeland contract is for peaking power provided at a time when TECO is operating its most expensive units or

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FLORIDA PUBLIC SERVICE COMMISSION

purchasing more expensive power from its affiliated IPP or third parties to meet system demand. The current fuel cost TECO charges retail consumers for purchasing or producing the power it resells under the wholesale contracts is \$24.15/mwh. TECO alleges that the retail customers will not be subsidizing the wholesale contracts and that retail customers will benefit from the transactions because the price charged to wholesale customers will cover the "incremental cost" of fuel. TECO promises that at all times it will credit retail customers with the incremental cost of fuel burned to serve the wholesale load to ensure that they are held harmless. This implies that if TECO pays \$60.00/MWH for purchased power plus handling costs that this price will be booked as a cost to the wholesale contract and credited to retail customers.

3. Naturally a prudent retail customer performing due diligence and observing that wholesale customers are being charged less than \$20.00/mwh would ask for incremental cost information to confirm the truthfulness of TECO's promise. This information was denied to FIPUG for the preparation of its case for the public hearing, and by this motion TECO seeks to keep the information confidential during the course of the contracts. FIPUG respectfully took exception to the ruling which denied it relevant discovery in preparation for the hearing and renews its objection to the continued concealment of this crucial evidence.

4. The governing statute on confidentiality is Section 366.093, Florida Statutes:

366.093 Public utility records; confidentiality.—

(1) The commission shall continue to have reasonable access to all public utility records and records of the utility's affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities...

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Information which affects a utility's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service are at issue. The commission shall determine whether information requested in discovery affects a utility's rates or cost of service. Upon a showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding.

(Emphasis supplied).

5. The statute, § 1.280 Florida Rules of Civil Procedure, and Commission rule 25-22.006, Florida Administrative Code, make it clear that if information is relevant, it is available for use by the parties in the proceeding. If the Commission determines that the public interest demands confidentiality, guidelines are established concerning public disclosure, but not to suppress relevant evidence available to a party. The Commission should not compound the previous error by further extending confidentiality.

6. TECO gives two reasons for preserving confidentiality. One reason is that it is negotiating with one of its large industrial customers for lower rates and other large industrial customers might seek to negotiate for lower rates. This unsupported comment is hardly justification for concealing the information. TECO is already under Commission obligation to supply such information to industrial customers considering

cogeneration. Order No. 10943 in Docket 810296-EU approved TECO's cogeneration tariff. The Commission ruled:

However, QF's can and should, be furnished estimates of avoided costs over a two year period to assist them in making long term capital expenditure decisions. The utilities must include in their tariffs estimated avoided cost, shown in six month periods...

Id. at 3.

7. The larger issue is whether retail customers should be foreclosed from examining relevant cost information in order to help TECO be more competitive with other utilities in the wholesale market. If the Commission approves TECO's request, it will necessarily assume the obligation jointly with the Public Counsel, the only other party that will be privy to the information, to continuously monitor incremental cost data twenty-four hours a day. The public will have no way of knowing whether the Commission is fulfilling its obligation in this star chamber domain.

8. The grant of monopoly power to a utility carries with it the concomitant responsibility to demonstrate that its rates are just and reasonable to the retail consuming public. When a utility uses the assets and inventory supported by the retail customers to engage in non-utility services, such as long term wholesale transactions, it begins to serve two masters and places itself in a difficult position that has been recognized since Biblical times. The least that can be expected is that the utility will make full disclosure to the retail customers who are asked to advance the funds to buy the fuel that will be used for non-retail transactions. The full disclosure should be formatted in a way that will match the cost of the fuel purchase with the

price received for that fuel so that even the casual observer can understand the good motives of the utility and how the retail customer is benefitting from the wholesale transaction. It would seem that TECO would not only endorse this policy, but actively pursue it rather than surreptitiously concealing the true facts from public view.

9. Incremental fuel cost is only a small component of the many factors that go into a wholesale transaction. Some of the others are capacity cost, reliability, profitability on the transaction to related companies, environmental concerns and the desire to avoid the construction of potentially competitive generation with more efficient operating costs, among others. The public protection to be achieved by allowing customers to assure themselves that they are not subsidizing non-utility activities far outweighs any benefit they may receive from allowing TECO to keep its estimated incremental cost projections secret.

10. There is one thing we know about future fuel cost projections. They are an estimate and the estimate will be wrong. If these costs were not extremely volatile, there would be no need for semi-annual fuel cost recovery proceedings with quarterly and emergency true-up proceedings available to the utility.

WHEREFORE, FIPUG requests that:

1. TECO's motion for protective order be denied; and
2. The Commission establish a reporting form to provide a bright line identification of each component of incremental fuel costs of fuel used to produce

electricity sold in the wholesale market for the protection of retail customers.

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Attorneys for the Florida Industrial
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing FIPUG Response to Tampa Electric Company's Motion for Protective Order has been furnished by *hand delivery or U.S. Mail to the following this 30th day of June, 1997:

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