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September 17, 1999

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

Re: Docket Number 981890-EU

Dear Ms. Bayo:

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

- ▶ Motion to Compel the Florida Reliability Coordinating Council to Respond to Discovery

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

Yours truly,

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

AFA	<u>2</u>
APP	<u>      </u>
CAF	<u>      </u>
CMU	<u>VGK/wb</u>
CTR	<u>enc.</u>
EAG	<u>4/6</u>
LEG	<u>      </u>
MAS	<u>5</u>
OPC	<u>      </u>
PAI	<u>2</u>
SEC	<u>      </u>
WAW	<u>      </u>
OTH	<u>      </u>

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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEIN, P.A. 11751 SEP 17 99

FPSC-BUREAU OF RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the  
aggregate electric utility reserve margins  
planned for Peninsular Florida

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Docket No. 981890-EU

Filed: September 17, 1999

**The Florida Industrial Power Users Group's Motion to Compel the  
Florida Reliability Coordinating Council to Respond to Discovery**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel the Florida Reliability Coordinating Council (FRCC) to respond to the discovery propounded by FIPUG. As grounds therefor, FIPUG states:

1. On September 8<sup>th</sup>, 1999, FIPUG served one interrogatory on the FRCC. The interrogatory stated:

Provide a calculation of the reserve margin for the period 2000 to 2007 assuming that all customers currently taking Direct Control Load Management Service, Curtailable Service or Interruptible Service give notice to change to firm service.

2. On September 14, 1999, FRCC objected to responding to FIPUG's discovery. FRCC gave two reasons for its refusal to answer, both of which are without merit.

3. First, FRCC states that:

[t]hough designated by the Commission as a formal proceeding pursuant to Sections 120.569 and 120.57, Florida Statutes, this proceeding lacks the requisite elements to fall under those statutes.<sup>1</sup>

Thus, FRCC concludes "discovery is not available."<sup>2</sup>

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<sup>1</sup>Objection at 1.

<sup>2</sup> FRCC also has the audacity to state that: "FIPUG, however, has no authority to require that its inquiries be responded to by any party and FRCC therefore objects to its interrogatories." Objection at 1. As an Intervenor in this case, FIPUG has every right to conduct discovery. The

4. The FRCC is attempting to repeat once more the arguments that have already been rejected several times by this Commission. Earlier in this proceeding, several utilities challenged the nature of this docket and complained that an investigation should not be conducted as a formal proceeding. Oral argument was held and the utilities' arguments were rejected:

. . . I find that the Rule [28-106.101(2), exempting investigations from formal evidentiary proceedings] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), *Florida Statutes*, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), *Florida Administrative Code*, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advanced by the utilities and the Florida Reliability Coordinating Counsel would hinder the Public Service Commission's ability to make a well-reasoned decision. *As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.*

. . . The current procedure established for this docket affords these [120.57(1)(b)] rights to all persons whose substantial interests may be affected by the decisions to be made in this proceeding.<sup>3</sup>

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distinction FRCC attempts to draw between discovery sent by Staff (to which it has responded) and discovery sent by FIPUG is wholly without merit. It is interesting to note that FRCC does not object to the discovery on the basis of relevance, but rather on the grounds that FIPUG has some sort of "second rate" status in this proceeding. FIPUG is an intervenor and has all rights accorded an intervenor, including the right to conduct discovery.

<sup>3</sup> Order No. PSC-99-1274-PCO-EU at 2, emphasis added..

5. Reconsideration of this order was sought before the full Commission and denied.<sup>4</sup>

The Commission reiterated the clear position set forth in its original Order:

The Order [Order No. PSC-99-1274-PCO-EU] unequivocally states that Rule 28-106.101(2), *Florida Administrative Code*, does not supercede the Commission's statutory jurisdiction to proceed with an investigation as a formal evidentiary proceeding. The Order also holds that Rule 25-22.036(3), *Florida Administrative Code*, controls the initiation of this proceeding. . . .

. . . [T]he companies have failed to demonstrate that the Order is based on any mistake of law or fact. The companies' analyses of the Commission's investigatory jurisdiction and their interpretation of the decision of the Administrative Commission is wrong. It cannot seriously be disputed that the Commission may proceed with this investigation as a formal evidentiary proceeding. Section 350.123, Florida Statutes, grants the Commission plenary procedural jurisdiction to effectuate its statutory obligations.<sup>5</sup>

6. The utilities argued that "discovery could not be permitted, there could be no parties or intervenors, witnesses could not be called to testify and no action or final order could be rendered following the proceeding. . . ."<sup>6</sup> The Commission directly rejected this claim: " The companies' position is in direct conflict with the Commission's manifest authority under Chapters 350 and 366, *Florida Statutes*."<sup>7</sup> The Commission has twice addressed the claim FRCC makes in its discovery objection; such objection should be summarily denied.<sup>8</sup>

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<sup>4</sup>Order No. PSC-99-1716-PCO-EU.

<sup>5</sup>Order No. PSC-99-1716-PCO-EU at 3-4.

<sup>6</sup>Order No. PSC-99-1716-PCO-EU at 4.

<sup>7</sup>*Id.*

<sup>8</sup>Despite the Commission's clear orders on the nature of this proceeding, the utilities refuse to relent. Motions to bifurcate the proceeding have been filed by TECo and FPC.

7. The Order Establishing Procedure<sup>9</sup> governs the conduct of discovery of this case. FIPUG, as a party granted Intervenor status,<sup>10</sup> is entitled to propound discovery. Arguments which have been made and rejected by the Commission can provide no basis for FRCC's refusal to respond to FIPUG's discovery requests.

8. FRCC's second basis for objection is that the calculation requested by FIPUG can as easily be made by FIPUG as by the FRCC. This is clearly not the case. In order to make the calculation, FIPUG would need to know *for each utility* how many MWs the individual utility has on each load management program, each curtailable program and each interruptible program. In addition, for each MW on each program, FIPUG would need to know what the notice requirements are for changing to firm service (7 days, 5 years etc...) and when the change to firm service can actually be implemented. This is not information in FIPUG's possession.

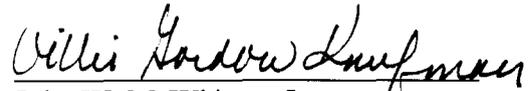
9. The FRCC says in its objection that "[t]his information is readily ascertainable by reference to the studies and reports filed with the Commission by FRCC." FIPUG does not believe this to be the case. However, if *all* the information delineated above has been filed with the Commission by the FRCC, FIPUG would accept production of *all* such information in lieu of FRCC's response to FIPUG's interrogatory.

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<sup>9</sup>Order No. PSC-99-0760-PCO-EU.

<sup>10</sup>Order No. PSC-99-0838-PCO-EU.

**WHEREFORE**, FIPUG requests that the Commission enter an order requiring the FRCC to promptly respond to FIPUG's discovery request.



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## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of The Florida Industrial Power Users Group's Motion to Compel the Florida Reliability Coordinating Council to Respond to Discovery has been furnished by (\*) hand delivery or U.S. Mail this 17<sup>th</sup> day of September, 1999 to the following:

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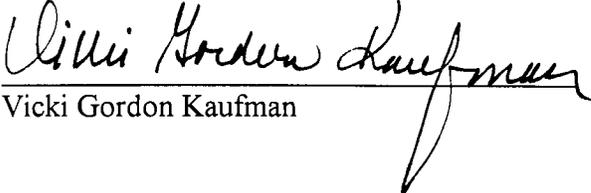
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