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RECORDS AND REPORTING

September 20, 1999

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Generic Investigation into Aggregate Electric Utility Reserve Margins Planned for Peninsular Florida; FPSC Docket No. 981890-EI

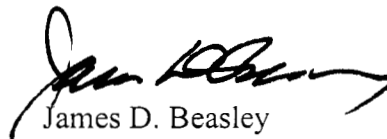
Dear Ms. Bayo:

Enclosed for filing in this docket are the original and fifteen (15) copies of Tampa Electric Company's Objections, Motion for Protective Order and Written Response to the Florida Industrial Power Users Group's First Request for Production to Tampa Electric Company (Nos. 1-6) and First Set of Interrogatories to Tampa Electric Company (Nos. 1-16).

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

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- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG Hand
- LEG 1 IDB/pp
- MAS 5 Enclosures
- OPC \_\_\_\_\_
- PAI 2
- SEC 1 cc: All Parties of Record (w/enc.)
- WAW \_\_\_\_\_
- OTH \_\_\_\_\_

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

11277 SEP 20 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981890-EU  
FILED: September 20, 1999

**TAMPA ELECTRIC COMPANY'S OBJECTIONS,  
MOTION FOR PROTECTIVE ORDER AND WRITTEN RESPONSE  
TO THE FLORIDA INDUSTRIAL POWER USERS GROUP'S FIRST REQUEST  
FOR PRODUCTION TO TAMPA ELECTRIC COMPANY (NOS. 1-6) AND FIRST  
SET OF INTERROGATORIES TO TAMPA ELECTRIC COMPANY (NOS. 1-16)**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to the Commission's Order Establishing Procedure<sup>1</sup>, submits the following Objections, Motion for Protective Order and Written Response to Florida Industrial Power Users Group's ("FIPUG") First Set of Interrogatories to Tampa Electric Company (Nos. 1-16) and First Request for Production of Documents to Tampa Electric Company (Nos. 1-6), and as grounds therefor, says:

**Discovery is Inappropriate in an Investigation**

This proceeding was commenced as a Commission investigation and not an adjudication. The investigation is preliminary to agency action. (The Commission has not taken agency action or proposed agency action.) Section 120.57(5), Florida Statutes, makes it very clear that Section 120.57 does not apply to agency investigations preliminary to agency action. As such, the investigation in this docket is not to be conducted as a Section 120.57 proceeding.

It is also clear under the Uniform Rules of Procedure, adopted pursuant to the Administrative Procedures Act ("APA"), that the rules governing decisions determining

<sup>1</sup> Order No. PSC-99-0760-PCO-EU issued April 20, 1999

substantial interests, Chapter 28-106, do not apply to “agency investigations or determinations of probably cause preliminary to agency action.” Rule 28-106.101, Florida Administrative Code.

Discovery under the Uniform Rules is available only in connection with decisions determining substantial interests under Chapter 28-106. Consequently, discovery is inappropriate in an investigation since it is not a proceeding in which substantial interests are being determined.

### **Preliminary Nature of these Objections**

Subject to the foregoing the position that discovery is inappropriate for all purposes in an agency investigation such as this proceeding, Tampa Electric makes the following general and specific objections to FIPUG’s First Set of Interrogatories and First Request for Production of Documents.

**The objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the ten (10) day notice requirement set forth in the Commission's Order Establishing Procedure in this docket. Should additional grounds for objection be discovered as Tampa Electric reviews its answers to interrogatories and documents, the company reserves the right to supplement, or revise or modify its objections prior to the time it serves answers to interrogatories or produces any documents. Should Tampa Electric determine that a protective order is necessary with respect to any of the information requested by FIPUG, Tampa Electric reserves the right to file a motion with the Commission seeking such an order at the time it serves its written responses to FIPUG.**

**This document shall also serve as Tampa Electric's written response to FIPUG's First Request for Production of Documents. The actual due date for the company's response is October 8, 1999. Tampa Electric reserves the right to supplement and modify**

**its written response by October 8, 1999, to the extent the company determines the same may be warranted during the company's further review of the nature of the documents requested and whether and the extent to which such documents exist.**

**By making the following general and specific objections, Tampa Electric in no way concedes that the discovery sought to be had by FIPUG in this general investigation proceeding is appropriate or authorized under the applicable provisions of the Administrative Procedures Act or the Uniform Rules of Procedure.**

### **GENERAL OBJECTIONS**

Tampa Electric makes the following general objections to FIPUG's First Set of Interrogatories and First Request for Production of Documents (collectively referred to as discovery requests) as follows:

1. Tampa Electric objects to each and every discovery request to the extent such request calls for information which is exempt from discovery by virtue of the attorney/client privilege, work product privilege, or other applicable privilege.

2. Tampa Electric objects to each and every discovery request insofar as the request is vague, ambiguous, overly broad, imprecise or utilizes terms that are subject to multiple interpretations but are not properly defined or explained. Any response produced by Tampa Electric to FIPUG's discovery requests will be provided subject to, and without waiver of, the foregoing objections.

3. Tampa Electric objects to each and every discovery request insofar as the request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding. Tampa Electric will attempt to note each instance where this objection applies.

4. Tampa Electric objects to each request insofar as it seeks to impose obligations on Tampa Electric which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

5. Tampa Electric objects to providing information to the extent that such information is already in the public record before the Florida Public Service Commission and available to FIPUG through normal procedures.

6. Tampa Electric objects to each and every discovery request to the extent that responding to the request would be unduly burdensome, expensive, oppressive, or excessively time consuming.

7. Tampa Electric objects to each discovery request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that FIPUG's discovery requests call for the production of information which is not subject to the trade secrets privilege, but nevertheless is proprietary confidential business information, Tampa Electric will make such information available to FIPUG pursuant to an appropriate non-disclosure agreement, subject to any other general or specific objections contained herein.

8. Tampa Electric is a large corporation with employees located in many different locations. In the course of its business, Tampa Electric creates numerous documents that are not subject to Florida Public Service Commission or other governmental records retention requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document may be provided in response to these discovery requests. Rather these responses provide all of the information obtained by Tampa Electric after a reasonable and diligent search conducted in connection with this discovery request. This includes all files that

are reasonably expected to contain the requested information. To the extent that the discovery requests purpose to require more, Tampa Electric objects on the grounds that compliance would impose an undue burden or expense on the company.

### **Motion for Protective Order**

9. Tampa Electric's objections to FIPUG's discovery requests are submitted pursuant to the authority contained in Slatnick v. Leadership Housing Systems of Florida, Inc., 368 So.2d 79 (Fla. 3<sup>rd</sup> DCA 1979). To the extent that a Motion for Protective Order is required, Tampa Electric's objections are to be construed as a request for a Protective Order.

### **Responses and Objections to Specific Requests**

Subject to, and without waiving its position that discovery by third parties such as FIPUG is entirely inappropriate in this investigative proceeding, and subject to and without waiving the foregoing general objections, Tampa Electric makes the following specific objections to FIPUG's First Set of Interrogatories and First Request for Production of Documents:

#### **FIPUG's First Set of Interrogatories**

10. Tampa Electric objects to each and every Interrogatory No. 1-16 in that they are vague and confusing and beyond Tampa Electric's ability to respond, owing to the fact that FIPUG has defined TECO to refer to Florida Reliability Coordinating Council ("FRCC"), individually and collectively. FIPUG similarly defines "you" or "your" to refer to the FRCC. Tampa Electric cannot answer for the FRCC.

11. Tampa Electric objects to Interrogatory No. 1 for its vagueness in its failing to define "curtailments." Tampa Electric does not have curtailable rate schedules. Tampa Electric

additionally objects to Interrogatory No. 1 if it is intended to refer to interruptions in that responding to this interrogatory would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This interrogatory is a “make work” exercise which Tampa Electric should not be required to perform.

12. Tampa Electric objects to Interrogatory No. 4 on the ground that responding to this interrogatory would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This interrogatory is a “make work” exercise Tampa Electric should not be required to perform.

13. Tampa Electric objects to Interrogatory No. 8 on the ground that responding to this interrogatory would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This interrogatory is a “make work” exercise Tampa Electric should not be required to perform.

14. Tampa Electric objects to Interrogatory No. 9 on the ground that it is vague and unanswerable. There are no parameters assigned to what is meant by “power shortages” or “other states.” Consequently, the impact cannot be quantified or reasonably described.

15. Tampa Electric objects to Interrogatory No. 10 on the ground that responding to this interrogatory would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This interrogatory is a “make work” exercise Tampa Electric should not be required to perform.

16. Tampa Electric objects to Interrogatory No. 14 on the ground that it calls for information that is not relevant to the subject matter of this proceeding nor would the information be likely to lead to the discovery of admissible evidence.

17. Tampa Electric objects to Interrogatory No. 15 on the ground that it calls for information that is not relevant to the subject matter of this proceeding nor would the information be likely to lead to the discovery of admissible evidence.

**FIPUG's First Requests for Production of Documents**

18. Tampa Electric objects to Request No. 1 on the ground that it calls for information that is not relevant to the subject matter of this proceeding nor would the information be likely to lead to the discovery of admissible evidence.

19. Tampa Electric objects to Request No. 2 on the ground that it calls for information that is not relevant to the subject matter of this proceeding nor would the information be likely to lead to the discovery of admissible evidence.

20. Tampa Electric objects to Request No. 3 on the ground that responding to this request would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This request is a "make work" exercise Tampa Electric should not be required to perform. In addition, this information is not relevant to this proceeding nor is it likely to lead to the discovery of admissible evidence.

21. Tampa Electric objects to Request No. 4 on the ground that responding to this request would be unduly burdensome and would require Tampa Electric to engage in significant and time consuming research, analysis and reporting of information having no perceptible relevance to the subject matter of this proceeding. This request is a "make work" exercise



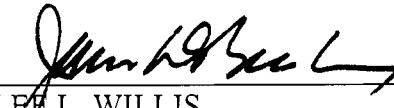
Tampa Electric should not be required to perform. In addition, this information is not relevant to this proceeding nor is it likely to lead to the discovery of admissible evidence.

22. Tampa Electric objects to Request No. 6 on the ground that it is vague. The request does not define curtailment. Tampa Electric does not have curtailable rate schedules. In addition, this information is not relevant to this proceeding nor is it likely to lead to the discovery of admissible evidence.

WHEREFORE, Tampa Electric submits the foregoing in response to FIPUG's First Request for Production of Documents (Nos. 1-6) and First Set of Interrogatories (Nos. 1-16).

DATED this 20<sup>th</sup> day of September 1999.

Respectfully submitted,



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Objection to LEAF's Interrogatory No. 10, filed on behalf of Tampa Electric Company, has been served by U. S. Mail or hand delivery(\*) on this 20<sup>th</sup> date of September 1999 to the following:

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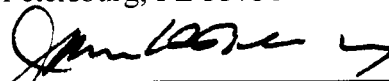
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