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September 28, 1999

**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 Number 950379-EI

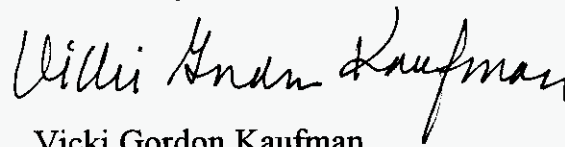
Dear Ms. Bayo:

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

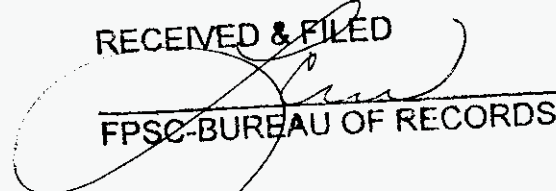
Please acknowledge receipt of the above on the extra copy and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Yours truly,



Vicki Gordon Kaufman

*Senkericz*  
 APP \_\_\_\_\_  
 C/enc. \_\_\_\_\_  
 CMU \_\_\_\_\_  
 CTR \_\_\_\_\_  
 EAG   I   \_\_\_\_\_  
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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER-DATE

11718 SEP 28 99

FPSC-RECORDS/REPORTING

ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Determination of regulated earnings of  
Tampa Electric Company pursuant to stipulations  
for calendar years 1995 through 1999.

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Docket No. 950379-EI

Filed: September 28, 1999

**The Florida Industrial Power Users Group's Motion to Compel**

The Florida Industrial Power Users Group (FIPUG) pursuant to rule 28-106.206, Florida Administrative Code, and Rule 1.380, Florida Rules of Civil Procedure, files this Motion to Compel Tampa Electric Company (TECo) to respond to FIPUG's discovery served on September 8, 1999. As grounds therefor, FIPUG states:

**Introduction**

1. This docket is a result of two stipulations signed by FIPUG, TECo and the Office of Public Counsel (OPC) to address TECo's excessive earnings. As a party to these stipulations, FIPUG has a great interest in seeing that the purpose and the intent of the stipulations is carried out. All the discovery FIPUG propounded seeks to ensure that the stipulations are being administered as the parties intended. Because all the information concerning the implementation of the stipulations is in the hands of TECo, the only way that FIPUG can ascertain how the stipulations are being administered is through the discovery process.

2. On September 8, 1999, FIPUG served 10 interrogatory questions on TECo under the provisions of Rule 1.340, Florida Rules of Civil Procedure. TECo submitted shotgun general objections to all interrogatories and specifically objected to Interrogatory Nos. 1, 2, 3, 7, 8, and 9. The shotgun general objections should be overruled out of hand on the authority of Order No. PSC-

97-0054-PCO-WS in Docket 960329-WS because TECo has failed to demonstrate why the discovery requests are burdensome, oppressive or unreasonable, much less why they invade the attorney client privilege or other privilege or compel the disclosure of trade secrets. The scope of discovery has been recently reiterated by the Florida Supreme Court in Allstate Insurance Company vs. Boecher, 733 So 2d. 933, 995 (Fl. 1999) the Court succinctly opined:

Our rules of civil procedure broadly allow parties to obtain discovery of 'any matter, not privileged, that is relevant to the subject matter or the pending action,' whether the discovery would be admissible at trial, or is merely 'reasonably calculated to lead to the discovery of admissible evidence.

FIPUG will discuss the relevance of each question to the implementation of the stipulations below. TECo's objections are without merit and should be denied.

### **Response to Specific Objections**

3. FIPUG Interrogatory No. 1 asks TECo to break down its general expenses for "construction" into their requisite categories, such as new plant, new transmission, ... TECo objects on two grounds. First, TECo complains that the request is "burdensome." TECo has the burden in an earnings evaluation to prove its prudent investment in assets used and in useful service. The Commission's ultimate ruling will be predicated upon this proof having been supplied. Each dollar invested in rate base results in a reduction of the refund due to FIPUG and other customers by approximately 20% of each dollar invested. It is certainly not burdensome to provide such information in the broad general categories requested to enable further detailed inquiry. The information is solely in TECo's possession. It is the burden of proof that TECo is obligated to bear in this earnings review case. Next, TECo incredibly claims that FIPUG's question in regard to

TECo's construction expenditures has *no* relevance to this proceeding. Nothing could be further from the truth. This proceeding is about *TECo's earnings*; part and parcel of a review of earnings is a review of the rate base upon which a return is sought and the utility's ordinary and necessary expenditures; thus, the request is not only relevant, but critical to the analysis which must take place in this docket.

3. FIPUG Interrogatory No. 2 asks TECo for information on its affiliate transactions. TECo claims this request is not relevant. One hundred percent (100%) of each dollar expended by TECo to cover reasonable and prudent expenses reduces the refund due FIPUG and other customers. It is reasonable and proper to subject payments to affiliated companies to public scrutiny in detail. They are not arms length transactions. Customers and the Commission are entitled to evaluate these expenditures to insure that they are priced competitively. This information, which again is solely in TECo's possession, must be made available for review.

4. FIPUG Interrogatory No. 7 relates to TECo's relationship to TECO Energy and whether TECo is shielded from the claims of TECO Energy's creditors. TECo says an answer to this question would require a legal analysis. It would not; it is a factual question which TECo should be required to answer. Even if the interrogatory called for an opinion, Rule 1.340(b), Florida Rules of Civil Procedure, expressly provides.

An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. The party shall respond to the interrogatory giving the information not within the personal knowledge of the party.

Admittedly, TECo is a large complex company, but this fact does not shield it from discovery of information leading to relevant evidence.

5. At the Commission Agenda Conference on August 31, 1999, when this docket was discussed, TECo submitted Exhibit 1 for the Commission's consideration. Interrogatory No. 8 asks TECo to explain the entry "Cost Recovery Clause Reductions" noted in the exhibit. TECo objects and says FIPUG should be capable of performing this analysis. Such a claim is totally specious. TECo generated this document and provided no support for it at the Agenda Conference. FIPUG has no way of knowing what analysis, if any, TECo performed to generate the document. Therefore, TECo should be required to perform that information.

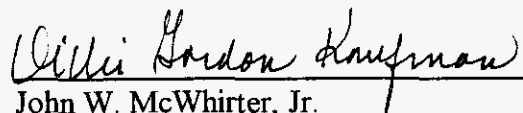
6. At the same Agenda Conference, FIPUG proffered a document which purported to extract verbatim information contained in "Earnings Surveillance Reports" TECo filed with the Commission. The exhibit referenced the source of the information supplied by TECo. The information filed for 1997 and 1998 is the information upon which the decision in this docket will be based. TECo described the exhibit containing this information as "fantasy" at the Agenda Conference. Interrogatory No. 9 asks TECo to explain any errors TECo contends FIPUG made in preparing that document. TECo objects by saying that the document contains errors and refuses to say what those alleged errors are because to do so would discover privileged information imperiling its future cross-examination. The purpose of discovery is to ascertain true facts in order to expedite the legal process. It frustrates this intent if parties attempt to conceal facts in order to spring them in cross-examination at trial. TECo should be required to explain, if it can, its characterization of FIPUG's document as "fantasy." The Florida Supreme Court in Surf Drugs, Inc. vs. Vermette, 236 So.2d 108, 111 (Fl.

1970 said:

[a] primary purpose in the adoption of the Florida Rules of Civil Procedure is to prevent the use of surprise, trickery, bluff and legal gymnastics.

7. TECo's objections are without merit and should be overruled.

**WHEREFORE**, FIPUG requests the Commission to enter an order compelling TECo to promptly respond to FIPUG's discovery and awarding FIPUG attorney fees.



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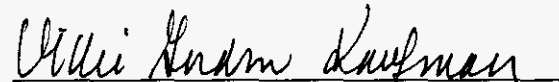
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing Motion to Compel has been furnished by U.S. Mail or by hand delivery (\*) this 20<sup>th</sup> day of September, 1999 to the following:

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