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June 6, 2000

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Re: Docket No.: 000001-EI

Dear Ms. Bayo:

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

- The Florida Industrial Power Users Group's Motion to Compel.

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

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery
Clause with Generating Performance Incentive
Factor.

Docket No. 000001-EI

Filed: June 6, 2000

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 May 18 and 19, 2000. As grounds therefor, FIPUG states:

Introduction

1. The discovery at issue in this case is related to FIPUG's Motion for Mid-Course Protection filed on May 18, 2000. In that Motion, FIPUG alleged that TECo engages in wholesale power sales which result in power being diverted that would otherwise be used to serve native retail load. This has resulted in frequent and unnecessary interruptions and has also resulted in FIPUG members incurring exorbitant buy-through power costs. The discovery FIPUG propounded, seeks, in general, to determine the extent of TECo's wholesale power sales and their relationship to the numerous interruptions experienced by FIPUG members and the high cost of buy-through power. Because the requested information concerning TECo's wholesale power sales and periods of buy-through power purchases is solely in the possession of TECo, the only way that FIPUG can prepare its case is to secure this information from TECo.

General Objections

2. On May 18 and 19, 2000, FIPUG served 27 request for admissions, 11 interrogatories and 2 requests for production of documents on TECo under the provisions of Rules 1.340, 1.350 and 1.351, Florida Rules of Civil Procedure. TECo submitted broad, non-specific objections to all requests for admissions, interrogatories, and requests for production of documents. It specifically objected to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, and 10, and Request for Production of Documents Nos. 1 and 2.

3. The general, non-specific objections should be overruled out of hand based on Order No. PSC-97-0054-PCO-WS, Docket 960329-WS. In that order, the Commission overruled discovery objections made by Gulf Utility Company, who claimed that the discovery requests were burdensome, oppressive, or unreasonable because Gulf did not demonstrate any grounds to support such claims. TECo has failed to demonstrate why FIPUG's discovery requests are burdensome, oppressive or unreasonable, or why they invade the attorney client privilege or other privilege or compel the disclosure of trade secrets as it generally alleges.

4. The Florida Supreme Court in Allstate Insurance Company vs. Boecher, 733 So 2d. 933, 995 (Fl. 1999), has recently discussed the scope of discovery:

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.

This standard must be used to summarily reject all TECo's general objections.¹

Response to Specific Objections

5. FIPUG Interrogatory No. 1 asks for an hour-by-hour breakdown of certain information during the periods when buy-through power was purchased for interruptible customers, such as the quantity of power purchased for each interruptible customer, the price paid for that power and other information relating to TECo's wholesale power sales for the corresponding periods. TECo objects on two grounds. First, TECo complains that the request is "burdensome and oppressive." However, the Commission and the courts have required more than a mere claim that a request is burdensome or over broad to sustain an objection. *See, First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc.*, 545 So. 2d 502, 503 (4th DCA 1989). In Order No. PSC-00-0904-PCO-EI, Docket No. 950379-EI, the Commission granted FIPUG's motion to compel over TECo's similar general objections, citing the above case. For many of those interrogatories, TECo had used a similar "burdensome" objection, which the Commission rejected. Because TECo has not demonstrated the "burden" it faces, its objections must be rejected. TECo is the only party with access to this information and must provide it.

5. In relation to this request, TECo has also objected to Production Request No. 2. TECo argues that it has provided from "time to time" "redacted versions of *similar* types of information, although not to the degree of detail" FIPUG requires. FIPUG assumes TECo is referring to documents produced in the reserve margin docket (Docket No. 981890-EU). However,

¹As to discovery for which no specific objections were made (which includes all requests for admissions), the objections should be summarily denied and responses required.

production in that docket there is not sufficient for TECo to avoid its discovery obligations in this case.

6. First, TECo admits the information it produced in the reserve margin docket was "similar", though not exactly what FIPUG has sought here. Second, those documents were produced at TECo offices, where FIPUG reviewed them, but did not take possession of most of them. It no longer has access to them for analysis. Third, the issues in the reserve margin were not the same as the issues in this docket and the information FIPUG seeks here was not provided in the reserve margin case. Further, while FIPUG seeks information from 1998 to date, TECo only wants to provide information from mid-April 1999 forward, omitting some 18 months. The time frame requested by FIPUG is necessary for a thorough analysis.

7. TECo also states that subject to its numerous objections, it will produce documents in lieu of answering the discovery. While this is an option provided for under the rules, TECo must ensure that all the information FIPUG has requested (not "similar" information) is readily accessible to FIPUG.

8. TECo then states that it "*may* not maintain records" in such a manner as to provide all the categories of information FIPUG seeks. Either it does or does not do so; FIPUG finds its "objection" confusing. TECo says it will provide what information it does maintain (again, saying it *may* be willing to provide it), in monthly compilations (as opposed to hourly), so that FIPUG can extract the information itself. However, in order to allow FIPUG to obtain the information it needs, information solely in TECo's possession, it is necessary for TECo to provide the information requested. FIPUG would need expertise in TECo's record-keeping and information-

collecting methods to "extract" the information requested in Interrogatory No. 1.

9. FIPUG Interrogatory Nos. 2, 3, and 4 request additional information relating to the information requested in Interrogatory No. 1, consisting of whether the buy-through power was purchased from an affiliated company, which purchases were "as available" purchases from cogenerators, and what the system generation status was for each facility, respectively, during the periods buy-through power was purchased. TECo's objections to these interrogatories are the same as those for No.1 and should be denied for the same reasons. Additionally, TECo argues that the information sought is irrelevant. However, the information requested in Nos. 2, 3, and 4 directly relates to the propriety of buy-through purchases made by TECo, and whether it exercised its fiduciary duty appropriately on behalf of retail customers.

10. Interrogatory No. 5(a) requests the prices for the TECo sale of 944,856 MWHs of wholesale power, as reported in its true-up filing on April 3, 2000 in this docket. TECo objects to this interrogatory and argues that the information is "confidential proprietary business information pertaining to highly competitive market based pricing." The Commission should deny this objection for two reasons. First, the pricing used by TECo for its wholesale power sales during that period is at this point more than a year old and does not likely reflect the current prices used by TECo. It would therefore not jeopardize its current wholesale power sales efforts. Second, this information is directly related to the costs imposed on interruptible customers, as this power might have been available to prevent unnecessary interruptions had it not been sold in the wholesale market -- one of the main allegations of FIPUG's complaint. TECo is the only source for the information and therefore should be compelled to provide it.

11. Interrogatory No. 6 simply requests the days during the past twelve months that TECo did not offer power for sale on the short-term market. TECo has objected to this interrogatory saying it does not keep records of this type. However, it would be simple for TECo to determine on what days it did offer power on the short-term market and therefore be able to determine the opposite.

12. Interrogatory No. 7 requests the price(s) paid to FPC and PECO for power to serve the FMPA contract in 1999. TECo's objection to this interrogatory is similar to its objections to Interrogatory No. 5 and should be denied for the same reasons.

13. Interrogatory No. 10 requests TECo to list the contemporaneous wholesale power sales, the purchaser, and the price paid by the purchaser, when power was purchased for firm or interruptible customers at more than \$25/MWH. TECo claims this interrogatory is similar to No. 1 and objects to it on the same basis. However, this interrogatory presents a more simple inquiry for only the days that TECo purchased power at higher rate than is customary. For reasons similar to those in Interrogatory No. 1, the Commission should deny this objection.

14. Request for Production No. 1 requests the documents, memoranda, analyses, consulted or relied upon in responding to Interrogatory Nos 1-11. TECo has objected to this request, claiming again that such a request is "burdensome" and "patently unreasonable." However, if TECo is required to respond to the interrogatories, TECo will have and use such documents, and will only be required to copy the documents utilized. This objection does not sustain an argument that such a request is burdensome and should therefore be rejected.

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



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Motion to Compel by (*) hand delivery, or U.S. Mail this 6 day of June 2000, to the following parties of record:

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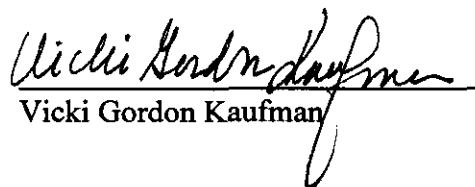
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