

ORIGINAL

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

July 19, 2001

VIA HAND DELIVERY

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

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COMMISSION
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Re: Docket No. 010001-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of:

- The Florida Industrial Power Users Group's Response to Tampa Electric Company's Motion for Protective Order and FIPUG's Request for Expedited Ruling

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.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased
Power Cost Recovery Clause
and Generating Performance
Incentive Factor
_____ /

Docket No. 010001-EI

Filed: July 19, 2001

**FIPUG's Response to Tampa Electric Company's Motion for Protective Order
and FIPUG's Request for Expedited Ruling**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, files its response to Tampa Electric Company's (TECo) Motion for Protective Order. Such motion should be denied and TECo should be required to immediately supply the information and documents sought in FIPUG's discovery requests without limitation.

Introduction

1. TECo's current motion for protective order is just the latest in its continuing efforts to frustrate and delay FIPUG's ability to review documents pertinent to the matters at issue in this proceeding.

2. A brief review of the history of this discovery dispute is in order. On March 7, 2001, FIPUG served its First Set of Interrogatories and First Request for Production on TECo. TECo objected to many of the requests forcing FIPUG to spend time and resources to file a Motion to Compel and a Request for Expedited Treatment. TECo objected to the request to expedite the discovery dispute, though FIPUG's request was granted by the Commission via Order No. PSC-01-1057-PCO-EI, in which the Commission noted that: "The parties' case preparation, including conduct and analysis of discovery, should not be delayed."

3. On May 31, 2001, a hearing on FIPUG's motion to compel was held before

Prehearing Officer Jaber, followed by the entry of Order No. PS-01-1444-)CO-EI on July 5, 2001. The majority of FIPUG's positions were upheld and TECo was required to respond to most of FIPUG's discovery requests.

4. As to the two requests (Interrogatory No. 11(e) and POD No. 3) which are the subject of TECo's motion, TECo was given another opportunity to demonstrate that the information sought was of such a nature that a protective agreement was required (though TECo had totally failed to make such a showing in any of its prior objections/refusals to answer).

5. The point of this somewhat lengthy recitation of the chronology of this dispute is to demonstrate that FIPUG sought this clearly relevant information at the beginning of March. It is now mid-July, **some 4 ½ months** later and FIPUG still does not have the information necessary to prepare its case.

Interrogatory No. 11(e)

6. Interrogatory No. 11(e) asks TECo to provide the incremental cost of each power purchase made by TECo by hour on the day of, the day before and the day after an interruption from 1998 to the present. Such information is critical to assess whether TECo is selling lower price power off in the wholesale market and then purchasing higher priced power to serve its retail customers. FIPUG contends that this is the case but has been frustrated by TECo at every turn in its attempt to assess the factual information necessary to support its claim--information that is solely in TECo's possession.

7. At the motion hearing on May 31, in a spirit of compromise, FIPUG offered to sign a protective agreement as to information for 2000 and 2001 (though not one that would ban its own members from reviewing such information). TECo, however, absolutely refuses to respond to

Interrogatory No. 11(e), unless FIPUG signs a non-disclosure agreement. And not only must FIPUG sign such an agreement, but the agreement must contain the highly unusual requirement that the information **not** be disclosed to FIPUG members, the very entities with a substantial interest in this case. Such a position is untenable and should be rejected. In essence, TECo is asking this Commission to keep secret information that is several years old and could not possibly be of use to other competitors given the fast-paced and ever-changing wholesale market.

8. TECo argues that the provision of incremental cost information for **1998 and 1999** would somehow be of competitive value to others and allow them to “model” the TECo system. How others would do this is never explained. Information that is several years old is out of date and should not be shielded from public disclosure. Given changes in weather, fuel prices, operating conditions ... it is difficult to understand how information that is years old could be relevant to today’s market or of any help to those who participate in that market.

9. Further, TECo’s request that FIPUG members not be permitted to review the information would severely hamper FIPUG’s ability to prepare for hearing. Counsel for FIPUG must have the assistance of FIPUG members to adequately prepare for hearing.

Production Request No. 3

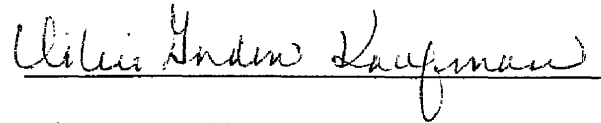
10. FIPUG’s Production Request No. 3 asks TECo to provide any documents that demonstrate that TECo is in compliance with this Commission’s Order No. PSC-97-1273-FOF-EU that it credit the fuel clause with the system incremental fuel cost associated with the FMPA and Lakeland wholesale sales. It has always been FIPUG’s position that if TECo has no documents demonstrating that it has complied with the Commission’s order it should simply so state. But TECo has refused to do so, indicating instead that its HAP program may shed some light on its compliance.

11. Again, TECo insists on a non-disclosure agreement prior to providing the information to FIPUG. TECo also insists that such agreement exclude FIPUG members from review of the documents. TECo says, with scant support or citation, that the Commission has on “scores of occasions” recognized the sensitive nature of such cost information. But the only example TECo provides is a ruling by former Commissioner Garcia, which was never reduced to writing. The Commission has already stated as to that ruling that: “The record of this proceeding does not indicate the basis for the former Commissioner’s ruling referred to by TECO. Further, that ruling, and the basis for it, were not reduced to writing, and thus provide little guidance for a determination of confidentiality in this proceeding.”¹

12. FIPUG suggests that TECo’s continued failure to produce these reports, to the extent they demonstrate in any way that TECo has complied with the Commission’s order regarding FMPA and Lakeland, are simply further delaying tactics on TECo’s part.

¹Order No. PSC-01-1444-PCO-EI at 10.

WHEREFORE, FIPUG requests that this Commission immediately deny TECo's motion for protective order and process this dispute on an expedited basis so that FIPUG may have the information necessary to prepare for hearing in this matter.



John W. McWhirter, Jr.
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33601-3350

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing FIPUG's Response to Tampa Electric Company's Motion for Protective Order and FIPUG's Request for Expedited Ruling has been furnished by (*) hand delivery or U.S. Mail this 19th day of July 2001 to the following:

(*)Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Steve Burgess
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

Matthew M. Childs
Steel Hector & Davis LLP
215 South Monroe Street
Suite 601
Tallahassee, Florida 32301

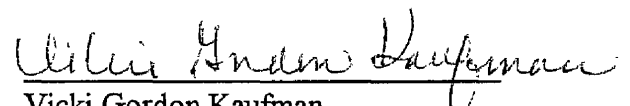
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32576

James A. McGee
Post Office Box 14042
St. Petersburg, Florida 33733

Norman H. Horton
Messer, Caparello & Self
215 South Monroe Street
Suite 701
Tallahassee, Florida 32302

John T. English
Florida Public Utilities Company
Post Office Box 3395
West Palm Beach, Florida 33402


Vicki Gordon Kaufman