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COMMISSION  
CLERK

March 19, 2003

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 030001-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Citizens' First Motion to Compel and Opposition to TECO's Motion For Protective Order.

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC 1
- OTH \_\_\_\_\_

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck  
Deputy Public Counsel

CB/pwd  
Enclosures

RECEIVED & FILED

R-V+P

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02663 MAR 19 03

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power )  
Cost Recovery Clause with )  
Generating Performance Incentive )  
Factor )  
\_\_\_\_\_ )

Docket no. 030001-EI

Filed March 19, 2003

**CITIZENS' FIRST MOTION TO COMPEL AND OPPOSITION TO TECO'S MOTION  
FOR PROTECTIVE ORDER**

Florida's Citizens ("Citizens"), by and through Jack Shreve, Public Counsel, file this motion to compel and opposition to the motion for protective order filed by Tampa Electric Company ("TECO") on March 17, 2003.

1. Citizens filed our first set of requests for production of documents to TECO on March 7, 2003. This set of requests consisted of nine individual requests for documents. TECO filed its response, objections, and request for protective order on March 17, 2003.

2. TECO's pleading contains a host of boilerplate objections containing little support or reference to the actual requests for production of documents served on the company. This motion to compel and objection to TECO's motion for protective order address those objections.

3. First, TECO objects to each request insofar as it seeks to impose obligations on TECO which exceed the requirements of the Florida Rules of Civil Procedure or Florida law. However, TECO provides no cite to any discovery request

that might impose such obligations on TECO, not does the company explain how any of Citizens' request impose such obligations. Since this objection fails explain in any way, shape or manner how any of Citizens' requests for documents impose such obligations, the objection should be stricken for lack of substance or foundation.

4. Second, TECO objects to each and every discovery request to the extent that such requests call for information which is exempt from discovery by virtue of attorney/client privilege, work product privilege, or other applicable privilege. Again, TECO doesn't show how any of Citizens' requests for documents call for such information. The first instruction contained in Citizens' request for documents states that "if any document is withheld under any claim of privilege, please furnish a list identifying each document for which privilege is claimed, together with the following information: date, sender, recipients, recipients of copies, subject matter of the document, and the basis upon which such privilege is claimed." This instruction is entirely consistent with Florida Rule of Civil Procedure 1.280(b)(5), which states that when a party withholds information discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. TECO's objection fails to comply with this rule of civil procedure and should be stricken for lack of any specificity or foundation, as well as for failing to comply with the rules of civil procedure.

5. Third, TECO 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. Once again, TECO fails to provide any substance whatsoever to this objection. TECO does not cite any of the requests for documents, nor does the company show how any of the requests seek such material. TECO's objection is just another boilerplate objection without any specificity or foundation and should be stricken.

6. Fourth, TECO 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, or which is proprietary confidential business information. To the extent TECO is making an objection based on privilege, it has not complied with Florida Rule of Civil Procedure 1.280(b)(5). To the extent TECO objects to providing proprietary confidential business information, Commission rule 25-22.006 controls the production of such documents. The Commission rule provides a procedure to protect such information, but the rule does not allow the utility to use this claim as a reason to refuse to produce documents. The Commission should strike this objection.

7. Fifth, TECO objects to producing "all" documents responsive to the requests for production of documents, suggesting it would be burdensome and oppressive to locate "all" documents responsive to the requests. Instead, TECO states that it will make a good-faith effort to locate responsive documents in files and other locations where they are expected to be found in the ordinary course of business. Citizens do not object to TECO's use of this procedure, all long as the company

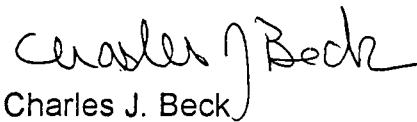
conducts a diligent search, produces all responsive documents found through the use of this procedure, and does not use this objection as a basis for refusing to produce any document found or identified by those persons involved in preparing the company's response to the requests for production of documents. With this caveat, Citizens amend our requests for production of documents to allow this good faith, diligent effort by TECO to locate responsive documents.

8. Sixth, TECO objects to each and every document request to the extent it requests amended, supplemental or continuing discovery. Citizens have no idea why TECO made this objection, because none of Citizens' requests seek amended, supplemental or continuing discovery. And, as is the case with their other objections, TECO cites no specific request to which this objection replies. This objection should be stricken.

9. Seventh, TECO objects to the definitions and instructions provided in the discovery requests as overbroad and burdensome. However, TECO does not state how any of the definitions or instructions are overbroad or burdensome, nor does it cite any instruction or definition. This is just another boiler-plate objection by TECO made without any foundation, and it should be stricken.

**WHEREFORE**, Citizens request the Prehearing Officer to strike or overrule the objections made by TECO, deny their request for a protective order, and issue an order requiring TECO to provide the documents requested in Citizens' first set of requests for production of documents.

Respectfully submitted,



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Fla. Bar No. 217281

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Attorney for Florida's Citizens

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

DOCKET NO. 030001-EI  
FILED: March 19, 2003

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the Citizens First Motion to Compel and Opposition to TECO's Motion for Protective Order has been furnished by U.S. Mail on this 19th day of March, 2003, to the following:

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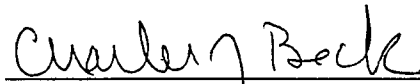
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