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January 20, 2004

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.: 031033-EI

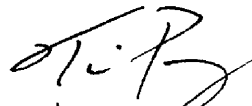
Dear Ms. Bayo:

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

- 00848-04 ▶ The Florida Industrial Power Users Group's Motion to Compel, and
- 00849-04 ▶ The Florida Industrial Power Users Group's Preliminary Objections to Tampa Electric Company's First Set of Interrogatories (Nos. 1-11) and First Request for Production of Documents (Nos. 1-9).

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

Sincerely,


Timothy J. Perry

ENCLOSURE
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004-2008 waterborne transportation contract
with TECo Transport and associated benchmark.

Docket No.: 031033-EI
Filed: January 20, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO COMPEL**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.204, Florida Administrative Code, moves this Commission for an order requiring Tampa Electric Company (TECo) to fully respond to FIPUG's First Set of Discovery (Interrogatory Nos. 25 and 29-32 and Production Request Nos. 10, 11, 13).¹ As grounds therefore, FIPUG states:

Introduction

1. This case concerns a multi-million dollar five-year transportation contract which TECo has entered into with its affiliate, TECo Transport Corporation (TECo Transport). TECo seeks to have the ratepayers assume responsibility for the amounts due pursuant to this transaction with its sister company. The purpose of this docket is to review the process by which the contract was put out for bid, to review the process used to evaluate the bids, and to determine whether the price TECo has already agreed to pay to its affiliate is just and reasonable for cost recovery purposes. Each of the discovery questions which TECo has refused to respond to go squarely to the issues in dispute in this docket.

2. On December 5, 2003, FIPUG served its First Set of Interrogatories (Nos. 1-34) and First Request for Production (Nos. 1-23) on TECo. On January 5, 2004, TECo served FIPUG with its responses. TECo refused to respond to relevant questions concerning TECo Transport. TECo also refused to produce the contracts at issue here, insisting instead that they be reviewed in TECo's presence. Intervenor testimony is currently due in this case on March 1,

¹ FIPUG's questions and TECo's responses are attached hereto as Attachment A.

2004. The information that is the subject of this motion is critical to enable FIPUG to prepare its testimony and prepare for hearing.

Standard for Ruling on Discovery Requests

3. The scope of discovery is broad. *See Allstate v. Boecher*, 733 So.2d 993, 935 (Fla. 1999).² Rule 1.280(b), Florida Rules of Civil Procedure, addresses the scope of discovery:

Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

4. The purpose of discovery is “to simplify the issues of the case, to eliminate the element of surprise, . . . to avoid costly litigation, and to achieve a balanced search for the truth and achieve a fair trial.” *See Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1996). In *Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980), the Florida Supreme Court stated that: “A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal.” The Court also stated that a main purpose of discovery is “to provide each party with all available sources of proof as early as possible to facilitate trial preparation.” *Id.* at 706. When the above standards for discovery are applied to TECo's objections, they must fail. The information FIPUG seeks is relevant and likely to lead to the admission of relevant evidence because the information bears directly on the issues before the Commission in this proceeding.

² "Our rules of civil procedure broadly allow parties to obtain discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action," whether the discovery would be admissible at trial, or is merely 'reasonably calculated to lead to the discovery of admissible evidence.'"

TECo Transport Financial and Operational Information³

5. FIPUG's Interrogatory Nos. 29 and 30 seek information related to TECo Transport's earnings under the prior contract for waterborne transportation and its projected earnings under the contract signed in October 2003, respectively. FIPUG Interrogatory Nos. 31 and 32 seek information related to which companies TECo Transport does most of its business with and which commodities it most frequently transports, respectively. TECo did not object to FIPUG's Interrogatories; nevertheless, it refused to answer them claiming lack of access to the information. However, the two companies involved in the transaction and contract at issue in this docket, TECo and TECo Transport, are affiliated companies. The revenues of both these companies go to the same place – the parent company, TECo Energy. TECo's argument that it "does not know" the answers to these questions must be rejected and it should be required to obtain this information from either its affiliate or its parent company (the beneficiaries of the transaction at issue).

6. The information sought is necessary to allow FIPUG to judge the reasonableness of the amount TECo has agreed to pay its sister company.⁴ This review is critical because TECo Transport did not earn the contract by submitting the lowest competitive bid, but rather was awarded the contract via a "sweetheart" right-of-first-refusal clause contained in its prior contract with TECo. Further, because the two parties involved are affiliates, the contract negotiations were not conducted "at arms length." The requested information is critical to FIPUG's analysis in this case.

³ OPC has also requested access to TECo Transport's financial records. OPC filed a motion to compel when TECo refused to provide the information. FIPUG adopts and incorporates the argument contained in OPC's January 9, 2004 motion to compel TECo herein.

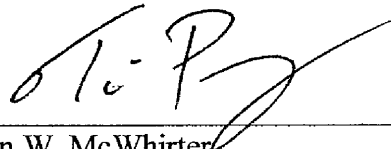
⁴ Such information was critical in analyzing the reasonableness of Florida Progress' payments to its transportation affiliate in the recently concluded fuel docket.

TECo Transport Contracts

7. FIPUG's Request for Production Nos. 10, 11 and 13 request drafts of the contract executed in October 2003 between TECo and TECo Transport, the contract itself, and the prior contract between the two parties, respectively. Interrogatory No. 25 asks TECo to identify the differences between the contract signed in October 2003 and the previous contract with TECo transport. TECo did not object to FIPUG's discovery requests or actually provide the information to FIPUG. Instead, TECo offered to make the information "available for review" by FIPUG. The contracts and contract comparison are integral to this case. FIPUG has signed a nondisclosure agreement. It should be provided copies of the documents for analysis.

8. Counsel for FIPUG has conferred with counsel for TECo regarding the above discovery and is authorized to represent that TECo opposes this motion.

WHEREFORE, FIPUG's Motion to Compel as to Interrogatory Nos. 25 and 29–32 and Request for Production Nos. 10, 11 and 13 should be granted and TECo should be required to respond immediately.



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**TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1ST SET OF INTERROGATORIES
INTERROGATORY NO. 25
PAGE 1 OF 1
FILED: JANUARY 5, 2004**

- 25.** Identify any and all differences between the existing contract between TECo and TECo Transport which expires at the end of 2003 and the new contract between TECo and TECo Transport executed on October 6, 2003.
- A.** Subject to the terms of the non-disclosure agreement between FIPUG and Tampa Electric, the requested confidential comparison of the contract that expired December 31, 2003 and the contract executed on October 6, 2003 will be provided for review.

**TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st SET OF INTERROGATORIES
INTERROGATORY NO. 29
PAGE 1 OF 1
FILED: JANUARY 5, 2004**

- 29.** What return did TECo Transport earn on the waterborne transportation contract with Tampa Electric that will expire at the end of 2003?
- A.** Tampa Electric does not know TECO Transport's earned rate of return for the waterborne transportation contract that expired December 31, 2003.

**TAMPA ELECTRIC-COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st SET OF INTERROGATORIES
INTERROGATORY NO. 30
PAGE 1 OF 1
FILED: JANUARY 5, 2004**

- 30.** What percentage of TECo Transport's revenues will be received from TECo for each of the years 2004 to 2009?
- A.** Tampa Electric does not possess or have any information regarding what percentage of TECO Transport's forecasted revenues will be derived from the Tampa Electric contract.

TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1ST SET OF INTERROGATORIES
INTERROGATORY NO. 31
PAGE 1 OF 1
FILED: JANUARY 5, 2004

31. List the five (5) largest customers, by volume shipped per year, of TECO Transport, which are not affiliated companies.
- A. Tampa Electric does not know what companies are TECO Transport's largest customers.

**TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st SET OF INTERROGATORIES
INTERROGATORY NO. 32
PAGE 1 OF 1
FILED: JANUARY 5, 2004**

- 32.** Provide a list of the top five (5) commodities by volume, other than coal, transported by TECo Transport by year for the last 5 years.
- A.** Tampa Electric has no specific knowledge of TECO Transport's top five commodities transported, by volume. However, public sources such as the TECO Transport Website and the TECO Energy annual report provide some insights into the activity of the ocean fleet, terminal and inland barge operation. Based on these sources, Tampa Electric is aware that TECO Transport carries or handles phosphates, phosphate rock, coke, potash, sugar, government grain shipments, scrap metal, coal and steel for un-related customers.

TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st REQUEST FOR PRODUCTION
OF DOCUMENTS
DOCUMENT NO. 10
BATE STAMPED PAGE: 402
FILED: JANUARY 5, 2004

10. Provide all drafts of the contract with TECo Transport executed on October 6, 2003.
 - A. Subject to the terms of the non-disclosure agreement between FIPUG and Tampa Electric, the requested confidential documents will be made available for review.

TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st REQUEST FOR PRODUCTION
OF DOCUMENTS
DOCUMENT NO. 11
BATE STAMPED PAGE: 403
FILED: JANUARY 5, 2004

11. Provide a copy of the contract with TECo Transport executed on October 6, 2003.
 - A. Subject to the terms of the non-disclosure agreement between FIPUG and Tampa Electric, the requested confidential document will be made available for review.

TAMPA ELECTRIC COMPANY
DOCKET NO. 031033-EI
FIPUG'S 1st REQUEST FOR PRODUCTION
OF DOCUMENTS
DOCUMENT NO. 13
BATE STAMPED PAGE: 405
FILED: JANUARY 5, 2004

13. Provide the waterborne transportation contract in effect with Teco Transport prior to the contract executed on October 6, 2003.
- A. Subject to the terms of the non-disclosure agreement between FIPUG and Tampa Electric, the requested confidential document will be made available for review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's to Motion to Compel has been furnished by (*) hand delivery, or U.S. Mail this 20th day of January 2004, to the following:


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