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JOHNNIE BYRD
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January 28, 2004

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. 031033-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Response of Citizens to Motion of TECO Transport Corporation to Quash Subpoena Duces Tecum to Tampa Electric Company.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Vandiver".

Robert Vandiver
Associate Public Counsel

RV/pwd
Enclosures

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's
2004 2008 waterbound transportation
contract with TECO transport and trade

Docket No. 031033-EI

Filed: January 28, 2004

**RESPONSE OF CITIZENS TO MOTION OF TECO TRANSPORT
CORPORATION TO QUASH SUBPOENA DUCES TECUM**

The Citizens of the State of Florida through the Office of Public Counsel ("Citizens" or "OPC"), pursuant to Rules 28-106.212 and 28-106.204, Florida Administrative Code, and Rules 1.280 and 1.351, Florida Rules of Civil Procedure, hereby file its response to the Motion of TECO Transport Corporation to Quash Subpoena Duces Tecum filed January 23, 2004, (TECO Transportation) in support thereof Citizens state:

1. This Commission has dealt with the issue of discovery on corporate affiliates. See Order No. PSC-01-1725-PCO-EI; Order No. PSC-01-2475-PCO-EI.¹ In each of these cases, Commissioner Baez as Prehearing Officer ordered disclosure of the affiliate company records.

2. In this docket, Citizens filed its First Motion to Compel on January 9, 2004. The Florida Industrial Power Users Group's Motion to Compel was filed on January 20, 2004. The Citizens incorporate those arguments here.

3. All of the revenues from TECO Transport and Tampa Electric inure to the benefit of the common corporate parent, TECO Energy. It is the commonality of interest that underlies the Citizens desire to review TECO Transport records. To best of Citizens knowledge, Tampa Electric is the only regulated entity out of the more that 100

¹ Docket No. 010827-EI, Petition of Gulf Power Company for approval of purchased power arrangement regarding Smith Unit 3 for cost recovery clauses dealing with purchased power and energy, issued August 23, 2001; In re: Review of Florida Power Corporation's earnings including effects with proposed acquisition with Florida Power Corporation by Carolina Power & Light, 01 FPSC 12:242 at 250-251.

customers of TECO Transport. (See affidavit of Timothy Bresnahan at P. 2). The concern here is that the regulated entity revenues could be used to subsidize the non-regulated business. This concern is particularly acute here where the sister company is granted a right of first refusal, and a limited number of bids are received in response to the Request for Proposals (RFP). It is only by examination of the records of TECO Transport that this concern be addressed.

4. Citizens have no desire to pursue the identity of individual clients of TECO Transport. Citizens would accept data with clients' names redacted and tonnages/cargos indicated. Citizens are more than willing to reduce the volume of information to manageable levels. Citizens would also note that some of the information requested here would be kept in the ordinary course of any business and is therefore readily available.

5. Citizens would also accept examination of records at TECO Transport's place of business with the understanding that only certain specific documents could be copied.

6. Counsel has contacted counsel for TECO Transport and Tampa Electric with some of the ideas in 4 and 5 above but was not successful in arriving at a settlement. Time is of the essence.

Respectfully submitted,



Robert Vandiver
Associate Public Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail or *hand-delivery this 28th day of January, 2004:

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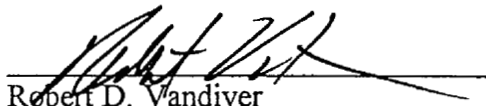
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