

BEFORE THE 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
ORDER NO. PSC-04-0289-PCO-EI
ISSUED: March 15, 2004

ORDER APPROVING STIPULATION ON PROCEDURAL MATTERS

By Order No. PSC-04-0195-PCO-EI, issued February 23, 2004, the procedural schedule for this proceeding was modified to reflect new hearing dates of May 27-28, 2004, and the parties were directed to discuss a proposal by Tampa Electric Company ("Tampa Electric") to bifurcate this proceeding, to discuss related discovery issues, and to make earnest efforts to resolve these procedural issues. On March 10, 2004, Tampa Electric, the Office of Public Counsel ("OPC"), and the Florida Industrial Power Users Group ("FIPUG") filed a joint motion for approval of a stipulation among those three parties that would resolve these procedural issues. The stipulation is attached hereto as Attachment A, which is incorporated herein by reference. Specifically, the stipulation provides that:

1. This case should proceed to hearing as currently scheduled;
2. The issues to be addressed in this proceeding should be worded the same as the issues deferred from Docket No. 030001-EI for hearing in this docket (Issues 17E, 17F, and 17G from Docket No. 030001-EI);
3. OPC and FIPUG will withdraw all pending discovery requests and refrain from issuing further discovery requests seeking or designed to lead to TECO Transport information from TECO Energy, Tampa Electric, TECO Transport, or any other affiliate of Tampa Electric prior to entry of an order by the Commission following its decision based on evidence received at the May 27-28, 2004, hearing; in turn, Tampa Electric will withdraw its motion for reconsideration of Order No. PSC-04-0158-PCO-EI, issued February 16, 2004, addressing FIPUG discovery and will dismiss its pending appeal in the First District Court of Appeal of Order No. PSC-04-0118-PCO-EI, issued January 30, 2004, addressing OPC discovery;
4. OPC and FIPUG will have the right in the May 27-28, 2004, hearing to advocate any approach to the determination of the reasonableness of Tampa Electric's payments to TECO Transport, and Tampa Electric will have the right to oppose any such approach;
5. OPC and FIPUG are not restricted from pursuing discovery in any proceeding subsequent to the May 27-28, 2004, hearing, and Tampa Electric has the right to oppose any such discovery; and
6. OPC and FIPUG will take no position on any discovery attempts by Commission staff or other parties to obtain or lead to TECO Transport information prior to the

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entry of an order by the Commission based on the evidence received at the May 27-28, 2004 hearing.

Upon consideration and pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, to issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, I grant the joint motion for approval of the stipulation. I believe that the stipulation provides a reasonable means of moving this proceeding forward to hearing by resolving several procedural matters in dispute between Tampa Electric, OPC, and FIPUG. In approving the stipulation, I note that it maintains the status quo with respect to the current hearing schedule and maintains the issues set forth in Docket No. 030001-EI as worded when they were deferred to this proceeding. Further, I note that the stipulation does not impair the opportunity of non-signing parties to pursue discovery or theories of the case that such parties believe are appropriate.

Based on the foregoing, it is

ORDERED by Chairman Braulio L. Baez, as Prehearing Officer, that the joint motion of Tampa Electric Company, the Office of Public Counsel, and the Florida Industrial Power Users Group for approval of the stipulation attached hereto as Attachment A and incorporated herein by reference, is granted.

By ORDER of Chairman Braulio L. Baez, as Prehearing Officer, this 15th day of March, 2004.


for Chairman Braulio L. Baez

BRAULIO L. BAEZ
Chairman and Prehearing Officer

(SEAL)

WCK/JAR

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's)
Waterborne transportation contract with) DOCKET NO. 031033-EI
TECO Transport and associated benchmark.) FILED: March 10, 2004
_____)

STIPULATION

1. Now pending before this Commission are several discovery requests and an audit request seeking the production of information of TECO Transport from Tampa Electric Company and TECO Transport.

2. These requests have led to: objections from Tampa Electric and TECO Transport; Motions to Compel; orders issued by the prehearing officer; Motions for Reconsideration and an Appeal to the First District Court of Appeal. The prehearing officer on February 23, 2004 granted OPC's Motion resetting the hearing date to May 27 – 28, 2004 and ordered all parties to meet to discuss procedural issues including a proposal by Tampa Electric to bifurcate this proceeding.

3. A meeting of all parties was held on March 2, 2004 following which Staff encouraged the parties to continue to seek an agreement on how to best proceed.

4. Following the March 2, 2004 meeting OPC, FIPUG and Tampa Electric met and reached a procedural agreement on how this case can proceed to hearing on May 27 – 28, 2004 while preserving rights with respect to the pending matters relating to access to TECO Transport information.

5. OPC, FIPUG and Tampa Electric agree as follows:

A. This case should proceed to hearing on May 27 – 28, 2004.

B. The issues for this hearing shall be worded as worded in Issues 17-E, 17-F and 17-G in Docket No. 030001-EI which were spun out for hearing in this docket.

C. Upon approval of this Stipulation OPC and FIPUG agree to withdraw all of their pending discovery requests and to refrain from issuing any further discovery requests seeking or designed to lead to TECO Transport information from TECO Energy, Tampa Electric, TECO Transport or any other affiliate of Tampa Electric prior to the entry of an order by the Commission following its decision based on evidence received at the hearing scheduled for May 27 – 28, 2004. Those pending discovery requests are set forth in “Attachment A” to this Stipulation: “Pending Discovery Requests of OPC and FIPUG Seeking Discovery of TECO Transport Information.” Tampa Electric agrees to withdraw its Motion for Reconsideration of Order No. PSC-04-0158-PCO-EI, issued February 16, 2004 addressing FIPUG’s discovery. Accordingly, all discovery sought by FIPUG and OPC in this proceeding seeking or designed to lead to TECO Transport information has either been answered or withdrawn. Accordingly, all disputes related to these discovery requests are moot. Tampa Electric will take no action with regard to any discovery orders that have been entered in this proceeding pending the entry of an order by the Commission following its decision based on evidence received at the hearing scheduled for May 27-28, 2004.

D. Upon approval of this Stipulation Tampa Electric will file for the dismissal of its appeal of the prehearing officer’s January 30, 2004 order compelling discovery, Order No. PSC-04-0118-PCO-EI, now pending in the First District Court of Appeal, without prejudice to its right to present any argument in any future appeal of any other order that may be issued in this docket.

E. OPC and FIPUG shall have the right in the hearing scheduled for May 27 - 28, 2004 to advocate any approach to the determination of the reasonableness of Tampa Electric's payments to TECO Transport for the transportation of coal. Tampa Electric shall have the right to oppose any proposal for determining the reasonableness of Tampa Electric's payments to TECO Transport for the transportation of coal advocated by any party. Nothing herein shall restrict OPC or FIPUG from pursuing discovery in any proceeding subsequent to the hearing scheduled for May 27-28, 2004. Tampa Electric shall have the right to oppose the discovery of or consideration of any information requested in any future discovery.

6. OPC and FIPUG agree that they will take no position on any discovery attempts by Staff or other parties to obtain or designed to lead to TECO Transport information from TECO Energy, Tampa Electric, TECO Transport or any of its affiliates prior to the entry of an order by the Commission based on the evidence received at the hearing scheduled for May 27 - 28, 2004.

General Provisions

7. This Stipulation is based on the unique factual circumstances of this case and shall have no precedential value in proceedings involving other utilities or in other proceedings involving Tampa Electric before this Commission. OPC, FIPUG and Tampa Electric reserve the right to assert different positions on any of the matters contained in this Stipulation if the Stipulation is not accepted by the Commission.

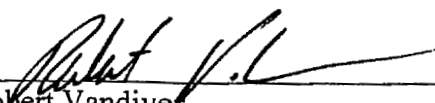
8. OPC, FIPUG and Tampa Electric hereto shall not unilaterally recommend or support the modification of this Stipulation or discourage its acceptance by the Commission.

9. OPC, FIPUG and Tampa Electric hereto shall not request reconsideration of or appeal the order which approves this Stipulation.

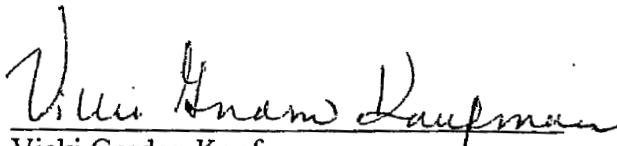
10. OPC, FIPUG and Tampa Electric urge that the prehearing officer enter an order approving this Stipulation at the earliest possible time.

11. This Stipulation shall be effective upon Commission approval. In the event that the Commission rejects or modifies the Stipulation, in whole or in part, OPC, FIPUG and Tampa Electric agree that this Stipulation is void unless otherwise ratified by OPC, FIPUG and Tampa Electric, and that OPC, FIPUG and Tampa Electric may pursue its interests as those interests exist, and that neither OPC, FIPUG or Tampa Electric will be bound to or make reference to this Stipulation before this Commission or any court.

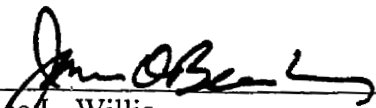
DATED this 10th day of March 2004.


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Attachment A

**Pending Discovery Requests of OPC and FIPUG
Seeking Discovery of TECO Transport Information**

1. FIPUG's First Set of Discovery: Interrogatory Nos. 29-32. Order No. PSC-04-0158-PCO-EI, issued February 16, 2004, addressing this discovery is now pending on a Motion for Reconsideration by Tampa Electric.
2. OPC's Subpoena Duces Tecum for Deposition to Ben H. Hill, Jr. dated February 19, 2004. OPC's Subpoena Duces Tecum, without Deposition, to Sheila McDevitt dated January 9, 2004 was superceded by the February 19, 2004 Subpoena.
3. OPC's First Set of Interrogatories: Nos. 11, 12, 13.
4. OPC's Second Set of Interrogatories: No. 15
5. OPC's First Request for Production: No. 15
6. OPC's Third Request for Production to Tampa Electric dated January 9, 2004.
7. OPC's Fourth Request for Production No. 64