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March 25, 2004

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Review of Tampa Electric Company's waterborne transportation contract with
TECO Transport and associated benchmark; FPSC Docket No. 031033-EI

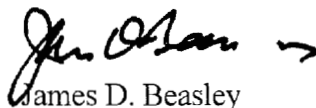
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Compel FIPUG's Answers to Tampa Electric Company's Second Request for Production of Documents (Nos. 10-17).

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,


James D. Beasley

JDB/pp
Enclosure

cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER-DATE

03950 MAR 25 8

FPSC-COMMISSION CLERK

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 25, 2004
_____)

**TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL
FIPUG'S ANSWERS TO TAMPA ELECTRIC COMPANY'S
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 10-17)**

Tampa Electric Company ("Tampa Electric" or "the Company") by and through its undersigned attorneys files this its Motion to Compel Answers by Florida Industrial Power Users Group ("FIPUG") to Tampa Electric's Second Request for Production of Documents (Nos. 10-17) and says:

1. On February 6, 2004 Tampa Electric served the following document requests on FIPUG:

Document Requests

10. Copies of all testimony of Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells has submitted in each administrative or judicial proceeding, separately identifying each proceeding in which he was permitted to testify as an expert witness, on one or more of the following subjects:

- (a) The appropriate means of conducting a request for proposals (RFP) process.
- (b) The appropriate pricing of waterborne dry bulk transportation services.
- (c) The appropriate pricing of waterborne coal transportation.
- (d) The appropriate pricing of rail dry bulk transportation services.
- (e) The appropriate pricing of rail transportation of coal.
- (f) The appropriate pricing of dry bulk transportation services
- (g) Utility/affiliate transactions

11. With respect to each testimony identified in your answer to Request No. 10, please provide the name of the court or administrative body, the style of the case and case number, and the date on which your testimony was admitted into the official record, together with copies of the official transcript page or pages that reflect the fact that Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells was authorized to testify as an expert in that proceeding.

12. Copies of all testimony and exhibits Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells submitted in each administrative or judicial proceeding involving a regulated utility (electric, gas, water, wastewater or telecommunications) company in which he/she appeared as a witness.

13. Copies of each administrative order or judicial decision in Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells possession where his position or opinion as a witness was expressly discussed.

14. Copies of each book and any article in any publication (professional, trade, scientific or scholarly journal) authored or co-authored by Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells that addresses one or more of the subjects listed in Request No.10.

15. A list of the titles of all books and all articles in any publication (professional, trade, scientific or scholarly journal) authored or co-authored by Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells.

16. A copy of each article, paper or writing contained in any publication (professional, trade and scholarly journal) written by, or co-authored by, Mr. Majoros or Mr. Wells addressing the determination of the cost and pricing associated with each of the subjects listed in Request No. 10.

17. All reports, papers, analyses or other documents in which Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells has assisted an electric utility or any other entity in:

- (a) estimating coal transportation costs;
- (b) examining the performances and marine operations of companies that deliver coal to utilities;
- (c) requesting and evaluating bid responses;
- (d) evaluating the costs of specific inland barge routes or specific ocean routes;

- (e) evaluating the costs of specific oceangoing vessels;
and
- (f) designing services to compete with railroad transportation services.

2. FIPUG in its February 16, 2004 preliminary objections refuses to produce any documents identified in Tampa Electric's Request for Production ("RFP") Nos. 12, 13 and 15 on the grounds that these requests are:

- A. Not relevant or calculated to lead to relevant information.
- B. Overly broad, unduly burdensome, harassing, expensive, aggressive and/or excessively time consuming.

3. The documents requested are clearly relevant to the qualifications of FIPUG's proposed witnesses to opine on the specific matters at issue in this proceeding – matters with respect to which FIPUG has indicated it will proffer Mr. Majoros and Mr. Wells as expert witnesses. The documents in question are uniquely known to the proposed witnesses and will have a direct bearing on their credibility, whether inconsistencies may exist between their prior testimonies and testimony they file in this proceeding, whether they have been qualified or rejected as expert witnesses in prior similar proceedings and whether they have testified in the past regarding the specific matters they plan to address in this proceeding. Tampa Electric is entitled to discover the information in question so it can prepare for hearing.

4. Tampa Electric does not know and cannot be reasonably expected to locate and acquire the documents requested in RFP's 12, 13 and 15. Mr. Majoros and Mr. Wells on the other hand should be able to easily recall and provide copies of the documents requested. A balancing of the difficulties of obtaining the requested documents strongly supports a determination that it would be far more burdensome, expensive and time consuming to expect Tampa Electric to identify and locate these witnesses' prior involvement in regulatory

proceedings and in publishing professional papers and books than it would be for the witnesses themselves to recollect and produce the requested information.

5. FIPUG refuses to produce any document under Request No. 17 on the additional ground that the request contains confidential information exempt from discovery. Tampa Electric is entitled to a full description of each document it claims is exempt from discovery by virtue of the attorney-client privilege including the date the document was created, who created the document, to whom it was sent and a description of contents of the document with sufficient specificity to determine the applicability of the privilege claimed. All of these documents should further be provided to the prehearing officer for an in camera review of these documents in review of this motion.

6. On February 23, 2004 FIPUG served its responses to Tampa Electric Company's Second Set of Interrogatories (Nos. 12-13) and Second Request for Production of Documents (Nos. 10-17) in which it objected to responding to Tampa Electric's RFP's Nos. 10, 11, 14 and 16 and restated its objections to RFP's 12, 13, 15 and 17. Essentially, FIPUG stated its unsubstantiated refusal to provide any documents in response to the scoped requests for production submitted by Tampa Electric. FIPUG should be compelled to submit documents and response to Request for Production Nos. 10, 11, 14 and 16 for the same reasons set forth above in connection with FIPUG's earlier objections. As FIPUG has stated in the past:


It is black letter law that 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. These cases are consistent with the broad rules of discovery.¹ (FIPUG's Third Motion to Compel Tampa Electric to Respond to Discovery filed October 1, 2001 in Docket No. 010001-EI)

WHEREFORE, Tampa Electric Company urges the Commission to enter its order compelling FIPUG to fully respond to Tampa Electric Company RFP's Nos. 10 through 17 – requests which Tampa Electric has intentionally limited to matters which are within the clear scope and relevance of the issues to be determined in this proceeding.

DATED this 25th day of March 2004.

Respectfully submitted,


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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

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.” 1.280(b)(1), *Florida Rules of Civil Procedure*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Compel FIPUG's Answers to Tampa Electric's Second Set of Interrogatories (Nos. 12-13) and Second Request for Production (Nos. 10-17), filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this ____ day of March 2004 to the following:

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