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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 Citizens' Answers to Tampa Electric Company's Second Request for Production of Documents (Nos. 9-16).

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.)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's Waterborne transportation contract with TECO Transport and associated benchmark.	))))	DOCKET NO. 031033-EI FILED: March 25, 2004

TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL CITIZENS' ANSWERS TO TAMPA ELECTRIC COMPANY'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 9-16)

Tampa Electric Company ("Tampa Electric" or "the company"), by and through its undersigned attorneys, files this its Motion to Compel the Citizens to answer certain of the Requests for Production of Documents objected to in Tampa Electric Company's Second Request for Production of Documents (Nos. 9-16) and, in support thereof, says:

1. On February 23, 2004 the Citizens of the State of Florida, represented by the Office of the Public Counsel ("OPC"), filed its answers to Tampa Electric Company's Second Request for Production of Documents (Nos. 9-16). OPC has not responded at all with respect to Request No. 9 pertaining to Mr. H. G. (Pat) Wells. That request sought copies of all testimony that Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells submitted in administrative or judicial proceedings on particular subjects relating to the issues involved in this proceeding. If Mr. Wells has not testified in any such proceeding, the response should so indicate. If he has, then OPC should provide the requested copies of testimony presented by Mr. Wells. Either way, Tampa Electric is entitled to a response and OPC should be compelled to respond fully and completely.

2. Request No. 10 asked for transcript pages reflecting the fact that Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells was authorized to testify as an expert in court ordered administrative proceedings. OPC responded that the transcript pages are not readily available. That is not a legitimate basis from which to disregard or ignore a discovery request. Tampa

Electric is entitled to know and OPC should be required to establish whether these two witnesses have been authorized to testify as experts in prior proceedings. This has a direct bearing upon whether they should be permitted to testify as expert witnesses in the forthcoming proceeding in this docket. It is not Tampa Electric's burden to establish this. It is OPC's burden. If OPC is willing to stipulate that Mr. Majoros and Mr. Wells have never been authorized to testify as an expert in any proceeding on any subject, Tampa Electric will stipulate to that fact. Otherwise, OPC should be required to produce the transcript pages reflecting the fact that Mr. Majoros and Mr. Wells have been authorized to testify as experts and, in particular, experts with respect to the matters that are issue in this proceeding. Tampa Electric has produced thousands upon thousands of pages of documents in response to requests for production of documents propounded by OPC. Those pages were not "readily available" but Tampa Electric, nevertheless, provided them. OPC should be compelled to do the same.

3. In RFP No. 11 Tampa Electric asks for copies of testimonies and exhibits of Mr. Michael J. Majoros, Jr. and Mr. H. G. (Pat) Wells in prior proceedings involving regulated utility companies in which they appeared as a witness. In its response OPC did not provide testimony and exhibits but simply provided a list of "prior appearances" of Mr. Majoros with a comment that "additional testimonies can be made available for review in Mr. Majoros's offices upon sufficient notice. OPC did not respond to request No. 11 at all with respect to Mr. Wells. Again, Tampa Electric has provided OPC with voluminous documents requested by OPC in this proceeding and in the fuel adjustment proceeding from which the issues in this proceeding were spun off. OPC, likewise, should be compelled to provide Mr. Majoros's testimonies and those of Mr. Wells in each administrative or judicial proceeding involving a regulated utility (electric, gas, waterwaste, water or telecommunications) in which they appeared as a witness. It is far

more convenient for OPC to send copies to Tampa Electric (as Tampa Electric provided to OPC) than to require Tampa Electric to review testimony copies in Mr. Majoros's offices. This is nothing more than a refusal to comply with a legitimate discovery request. OPC should be compelled to provide a full and complete response to Tampa Electric's RFP No. 11.

4. Request No. 12 asks for copies of each administrative order or judicial decision in which the positions or opinions of Mr. Michael J. Majoros, Jr. or Mr. H. G. (Pat) Wells as a witness were expressly discussed. OPC simply brushes off this request by stating "such orders or decisions are not readily available." Clearly OPC should be compelled to respond by providing the orders or decisions (if they exist) as described in Request No. 12. OPC is taking an entirely unfair approach by simply refusing to respond to this very limited and scoped discovery request. OPC should be compelled to provide a full and complete response or to concede that Mr. Majoros and Mr. Wells have never testified before.

5. Request No. 16 asks for all reports, papers, analyses and other documents in which Mr. Michael J Majoros, Jr. or Mr. H. G. (Pat) Wells has assisted in electric utility or any other entity in various activities related to the issues involved in this proceeding. In response OPC simply states:

> Please see the testimony regarding Young Brothers Tug and Barge attached to Document Request No. 9. Mr. Majoros has conducted a number of electric company depreciation studies in which he has observed both rail and marine delivery of coal to power plants.

The response also states: "Please see general statement regarding Mr. Wells." By this response OPC has simply refused to produce the documents, preferring instead to characterize those documents and Mr. Majoros's prior activity in the areas inquired about. Tampa Electric is entitled to see the documents requested – not OPC's characterization of those documents. OPC's brush off of Tampa Electric's legitimate discovery requests is entirely unfair, inconsistent with

the due process rights of Tampa Electric and highly inequitable given the degree to which Tampa Electric has provided full and complete answers to OPC's burdensome document requests in this proceeding and in the fuel adjustment proceeding that preceded it.

WHEREFORE, Tampa Electric Company urges the Commission to enter its order on an expedited basis compelling OPC to fully respond to Requests for Production of Documents Nos. 9, 10, 11, 12, and 17, all of which are contained in Tampa Electric's Second Request for Production of Documents to OPC.

DATED this 25th day of March 2004.

Respectfully submitted,

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Post Office Box 391
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Compel Citizens' Answers to Second Request for Production of Documents (Nos. 9-16), filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 25th day of March 2004 to the following:

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