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January 4, 2010

HAND DELIVERED

RECEIVED-FPSC  
10 JAN -4 PM 12:47  
COMMISSION  
CLERK

Ms. Ann Cole, Director  
Division of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Review of the Continuing Need and Cost Associated with Tampa Electric Company's Five Combustion Turbines and Big Bend Rail Facility;  
FPSC Docket No. 090368-EI

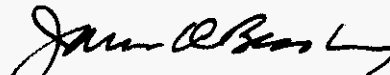
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to the Florida Industrial Power Users Group's Protest of and Complaint Regarding Order No. PSC-09-0842-PCO-EI.

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.)

COM \_\_\_\_\_  
APA 1  
ECR 1  
GCL 1  
RAD 1  
SSC \_\_\_\_\_  
ADM \_\_\_\_\_  
OPC \_\_\_\_\_  
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DOCUMENT NUMBER DATE  
00025 JAN -4 2010  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the continuing need and )  
Cost associated with Tampa Electric )  
Company's 5 Combustion Turbines and )  
Big Bend Rail Facility. )  
\_\_\_\_\_ )

DOCKET NO. 090368-EI

FILED: January 4, 2010

**TAMPA ELECTRIC COMPANY'S RESPONSE  
TO THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
PROTEST OF AND COMPLAINT REGARDING ORDER NO. PSC-09-0842-PCO-EI**

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the Florida Industrial Power Users Group's Protest of and Complaint regarding Order No. PSC-09-0842-PCO-EI ("FIPUG's pleading"):

1. FIPUG's pleading appears to be a premature attempt to raise an issue FIPUG contends should be addressed in the hearing that will be held in this proceeding in accordance with Order No. PSC-09-0842-PCO-EI (hereinafter "Order No. 09-0842"), issued December 22, 2009. Accordingly, no action by the Commission is warranted at this time in response to FIPUG's pleading, as the matters addressed therein can be taken up in due course in the hearing process the Commission has ordered on its own motion.

2. The nature of FIPUG's pleading is difficult to assess. It purports to be both a Protest and a Complaint regarding Order No. 09-0842. As such, it is deficient for two reasons. First, Order No. 09-0842 is not a proposed agency action ("PAA") order – the type of order that may be protested, in which event an evidentiary hearing may be held. In this docket, a hearing has been ordered and will be held in accordance with the express terms of Order No. 09-0842.

DOCUMENT NUMBER-DATE

00025 JAN-4 2010

FPSC-COMMISSION CLEAR

3. Secondly, Tampa Electric is not aware of a "Complaint" in regard to a Commission order, ever having been filed before the Commission, nor do the Commission rules or the Rules of Administrative Procedure contemplate any such "Complaint".

4. In the "Relief Requested" portion of its pleading, at page 6, FIPUG requests that the Commission set an evidentiary hearing, but one has already been ordered by the Commission. FIPUG also asks for substantive relief in the form of a request that Tampa Electric be required to revise its tariff, giving FIPUG's unidentified members either no increase or a limited increase under the approved step increase. FIPUG's pleading makes various allegations regarding the appropriateness of the tariffs Tampa Electric submitted in response to Order No. 09-0842. Tampa Electric disagrees with FIPUG and strongly believes those tariffs are fully consistent with Order No. 09-0842. The simple fact that FIPUG has requested a hearing on the issues raised in its pleading is a clear admission that no substantive relief is appropriate in advance of the hearing the Commission already plans to conduct.

5. It appears FIPUG contemplated that approval of the step increase would apply to all customers, including its members, as FIPUG argued against implementation of the step increase at the December 1, 2009 Agenda Conference. FIPUG did not argue that its members should be unaffected if the Commission voted to approve the increase.

6. The tariffs implementing the approved step increase have been submitted, administratively approved and placed into effect. All revenues collected thereunder are subject to refund with interest for the protection of all customers. FIPUG will be afforded full due process in the hearing the Commission has ordered.

WHEREFORE, Tampa Electric asserts that no action is necessitated by FIPUG's December 29, 2009 pleading inasmuch as all issues appropriately relating to the step increase

approved in Order No. 09-0842 will be addressed and resolved in the hearing called for in that order.

DATED this 4<sup>th</sup> day of January 2010.

Respectfully submitted,



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JAMES D. BEASLEY  
J. JEFFRY WAHLEN  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, Florida 32302  
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to the Florida Industrial Power Users Group's Protest of and Complaint regarding Order No. PSC-09-0842-PCO-EI, filed on behalf of Tampa Electric Company, has been served by hand delivery (\*) or U. S. Mail on this 4<sup>th</sup> day of January, 2010 to the following:

Mr. Keino Young\*  
Staff Attorney  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Ms. Vicki Gordon Kaufman  
Mr. Jon C. Moyle, Jr.  
Keefe, Anchors, Gordon and Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301

Mr. J. R. Kelley  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

  
\_\_\_\_\_  
ATTORNEY