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January 27, 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

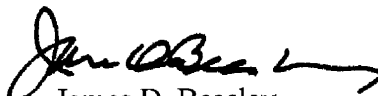
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response in Opposition to the Florida Industrial Power Users Group's Motion to Compel.

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
Enclosures

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

DOCUMENT NUMBER-DAT

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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: January 27, 2004
_____)

**TAMPA ELECTRIC COMPANY'S RESPONSE IN OPPOSITION TO THE
FLORIDA INDUSTRIAL POWER USERS GROUP'S MOTION TO COMPEL**

Tampa Electric Company ("Tampa Electric" or "the company"), responds as follows in opposition to the Florida Industrial Power Users Group's ("FIPUG") Motion to Compel Tampa Electric to respond to FIPUG's first set of discovery (Interrogatory Nos. 25 and 29 through 32 and Requests for Production of Documents Nos. 10, 11 and 13), and says:

As to Interrogatories Nos. 25 and 29 through 32

1. Contrary to FIPUG's assertion, Tampa Electric did not refuse to answer Interrogatories Nos. 25 or 29 through 32. Interrogatory No. 25 asks Tampa Electric the following:

25. Identify any and all differences between the existing contract between TECo and TECo Transport which expires at the end of 2003 and the new contract between TECo and TECo Transport executed on October 6, 2003.

2. The old and new transportation contracts speak for themselves. Rather than attempting to characterize the contents of the two contracts and any differences that might exist between them, Tampa Electric offered to provide FIPUG access to a comparison of the two documents that shows each change in legislative format as well as to the two contracts themselves so that FIPUG might make its own comparison and reach its own conclusions as to the nature of any differences that might exist between the two agreements.

3. The contracts in question are highly sensitive documents, and any public disclosure of them would be very harmful to Tampa Electric and its transportation affiliate. Notwithstanding this, Tampa Electric offered to make the contracts available to FIPUG in the offices of the undersigned counsel, as the company has done previously to meet the dual objective of affording the Commission Staff, FIPUG and other intervenors access to confidential documents while protecting against the public disclosure, inadvertently or otherwise, of the information contained in the documents. This procedure has worked well in the past with the Staff and various intervenors that have a need to review confidential documents as sensitive as the transportation agreements between Tampa Electric and its transportation affiliate. Tampa Electric stands ready for FIPUG to review these documents and draw its own conclusions regarding differences between them in the offices of the undersigned counsel. Tampa Electric believes this is a fair and proven compromise which has afforded intervenors an opportunity to review Tampa Electric's confidential information while insuring that the sensitive proprietary information contained therein is not made public.

3. Interrogatories No. 29 through 32 ask Tampa Electric:

29. What return did TECo Transport earn on the waterborne transportation contract with Tampa Electric that will expire at the end of 2003?
30. What percentage of TECo Transport's revenues will be received from TECo for each of the years 2004 to 2009?
31. List the five (5) largest customers, by volume shipped per year, of TECO Transport, which are not affiliated companies.
32. Provide a list of the top five (5) commodities by volume, other than coal, transported by TECo Transport by year for the last 5 years.

Tampa Electric did not refuse to answer these interrogatories. It clearly stated that it does not know TECO Transport's earned rate of return for the waterborne transportation contract that expired December 31, 2003, the percentage of TECO Transport revenues contributed by Tampa Electric, information regarding other TECO Transport customers or information about non-coal commodities transported by TECO Transport. These are truthful statements that fully answer the interrogatories. Rule 1.350, Florida Rules of Civil Procedure, does not require a party to respond to discovery requests that are not within its possession, custody or control. In addition, the requested information is completely irrelevant to this proceeding. The information requested by FIPUG does not indicate what Tampa Electric pays TECO Transport for waterborne transportation services provided to Tampa Electric.

5. The books and records of TECO Transport are kept entirely separate from the books and records of Tampa Electric.

6. Tampa Electric has provided FIPUG access to all information relating to the amounts paid or to be paid by Tampa Electric to TECO Transport for transportation services it provides to Tampa Electric.

7. Based on a recent decision by this Commission In re: Petition for a Rate Increase by Peoples Gas System¹, financial information pertaining to TECO Transport is not the type of information that is reasonably calculated to lead to the discovery of admissible evidence. In the Peoples Gas case the Commission denied OPC's motion to compel Peoples Gas to produce various financial documents of Tampa Electric Company. Virtually all of the arguments presented on behalf of Peoples Gas in opposition to OPC's motion to compel in that case apply with equal force with respect to FIPUG's Interrogatories Nos. 29-32.

¹ Order No. PSC-02-1613-PCO-GU issued November 21, 2002 in Docket No. 020384-GU

8. Here, as in Peoples Gas, the utility and the non-party have separate officers and employees and operate different systems in different geographic areas. Both maintain completely separate books and records and are operated as completely separate entities. The Peoples Gas decision even involved two utilities, whereas the instant case involves a completely non-regulated provider of transportation services to customers virtually on a worldwide basis.

9. Here, as in Peoples Gas, Tampa Electric is a party to this proceeding, and its affiliate, TECO Transport, is not.

10. In Peoples Gas the prehearing officer, Commissioner Baez, concluded that OPC's requests to produce various affiliate information concerning capital expenditures and revenue budget reports sought information that did not appear to be reasonably calculated to lead to the discovery of admissible evidence. Therefore, OPC's motion to compel those documents was denied.

11. Here, like in Peoples Gas, the information sought by FIPUG does not appear to be reasonably calculated to lead to the discovery of admissible evidence. Accordingly, FIPUG's motion to compel in this proceeding should be denied on the same grounds that the motion to compel in Peoples Gas was denied.

12. There exists a Commission approved methodology for assessing the reasonableness of amounts paid by Tampa Electric to TECO Transport for transportation services. That methodology was approved by way of stipulation in Order No. 20298 issued November 10, 1998 in Docket No. 870001-EI-A and reaffirmed in Order No. PSC-93-0443-FOF-EI issued March 23, 1993 in Order No. 930001-EI. When the current procedure was approved Public Counsel and Staff agreed that details concerning the coal supply and coal transportation contracts between Tampa Electric and its affiliates were not subject to the

proceeding that gave rise to the stipulation and that Tampa Electric was free to negotiate a contract without the involvement of the parties or the Commission so long as the pricing resulted from that contract remained at or below the pricing benchmarks.

13. As of this date there has been no Commission determination that the pricing benchmark mechanisms approved in the two prior Commission orders are no longer reasonable.

14. Once entered into, an agency should not ignore or set aside a stipulation without records evidence of fraud, overreaching, misrepresentation or withholding facts by the adversary or some other reason rendering it void. (Spitzer v. Bartlett Brothers Roofing, 437 So.2d 758, 760-761). While FIPUG may allege deficiencies in the currently approved benchmark pricing methodology, there has been no determination by the Commission that the stipulation is no longer valid. Consequently, FIPUG's Interrogatories Nos. 25 and 29-32 seek information that is irrelevant to the appropriateness of payments made by Tampa Electric for coal transportation services and will not lead to the discovery of admissible evidence.

As to Production of Document Requests Nos. 10, 11 and 13

15. FIPUG's Production of Documents Nos. 10, 11 and 13 ask Tampa Electric to produce the following:

10. Provide all drafts of the contract with TECo Transport executed on October 6, 2003.
11. Provide a copy of the contract with TECo Transport executed on October 6, 2003.
13. Provide the waterborne transportation contract in effect with TECo Transport prior to the contract executed on October 6, 2003.

16. Tampa Electric has offered to afford FIPUG access to the contracts in question in the offices of Tampa Electric's undersigned counsel, subject to the Non-Disclosure Agreement

between FIPUG and Tampa Electric. FIPUG has refused to avail itself of this continuing opportunity.

17. As stated earlier, the contracts in question are highly confidential and any public disclosure of their terms and provisions would irreparably harm Tampa Electric and TECO Transport. In the past Tampa Electric has provided similar information to FIPUG pursuant to non-disclosure agreements similar to that executed on behalf of Tampa Electric and FIPUG in the instant proceeding. Notwithstanding having signed those non-disclosure agreements, counsel for FIPUG in the recent past has openly disclosed confidential information covered by such non-disclosure agreements in a public meeting and has provided confidential information to individuals who are not signatories to a confidentiality agreement with Tampa Electric, all in contravention of such non-disclosure agreements, much to the detriment of the business and financial interests of Tampa Electric and its affiliates. Tampa Electric does not allege or ascribe any motives to these actions. However, whether by intent, inadvertence, mistake or sloppiness, these disclosures have made it abundantly clear that neither FIPUG nor counsel for FIPUG should be permitted to have physical possession or control of copies of the confidential documents requested.

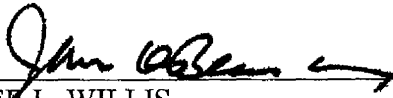
18. As a compromise, in an effort to afford FIPUG's appropriate representatives access to the contracts in question, and at the same time to protect Tampa Electric from any intentional or inadvertent public disclosure of those contracts or their terms and conditions, the company has offered up the contracts in question for review in the offices of the undersigned counsel, located approximately two blocks from the offices of counsel for FIPUG. Nothing could be more fair or appropriate given the history of FIPUG's public disclosure of Tampa

Electric's confidential information in violation of non-disclosure agreements covering the information thus disclosed.

WHEREFORE, Tampa Electric submits the foregoing as its response in opposition to FIPUG's Motion to Compel.

DATED this 27th day of January 2004.

Respectfully submitted,



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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response in Opposition to FIPUG's Motion to Compel, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 27th day of January 2004 to the following:

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Senior Attorney
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0863

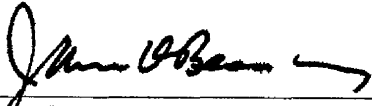
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