

ORIGINAL

LAW OFFICES

**McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.**

100 NORTH TAMPA STREET, SUITE 2800  
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA

P.O. Box 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0800

FAX (813) 224-1854

CAROL GRANDJEAN

PLEASE REPLY TO  
TALLAHASSEE

TALLAHASSEE OFFICE  
117 S. GADSDEN  
TALLAHASSEE, FLORIDA 32301

TELEPHONE (850) 222-2525

FAX (850) 222-5000

LYNWOOD F. ARNOLD, JR.  
JOHN W. BAKAS, JR.  
C. THOMAS DAVIDSON  
STEPHEN O. DECKER  
LINDA E. JORGE  
VICKI GORDON KAUFMAN  
JOSEPH A. MCGLOTHLIN  
JOHN W. McWHIRTER, JR.  
RICHARD OLIVER  
RICHARD W. REEVES  
FRANK J. RIEF, III  
DAVID W. STEEN  
PAUL A. STRASKI

July 16, 1998

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
Florida Public Service Commission  
Division of Records and Reporting  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0870

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JUL 15 PM 3:29  
TALLAHASSEE  
McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, P.A.

Re: Docket No. 980693-EI

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Florida Industrial Power Users Group's Response to Tampa Electric Company's Objections and Motion for Protective Order in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return them to me. Thank you for your assistance.

Yours truly,

*Joe McGlothlin*  
Joseph A. McGlothlin

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Tampa Electric Company for Approval of Cost Recovery for a new Environmental Program, the Big Bend Units 1 and 2 Flue Gas Desulfurization System.

Docket No. 980693-EI

Filed July 16, 1998

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S RESPONSE TO TAMPA ELECTRIC COMPANY'S OBJECTIONS AND MOTION FOR PROTECTIVE ORDER

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.037, Florida Administrative Code, responds to Tampa Electric Company's (TECO) objections to FIPUG's First Request for Production of Documents and motion for protective order. Such objections and the request for a protective order should be denied. The Commission should compel TECO to provide the documents that are the subject of the first request. As grounds therefor, FIPUG states:

- 1. On June 30, 1998, FIPUG served its First Request for Production of Documents (Nos. 1-6) by hand delivery on TECO.
2. Order No. PSC-98-0864-PCO-EI, Order Establishing Procedure, requires parties upon whom discovery requests are served to object or ask for clarification within ten days of service. The purpose of this requirement is "to reduce delay in resolving discovery disputes."
3. On July 10, TECO served its "objections" and a motion for protective order as to FIPUG's production requests.
4. TECO has failed to comply with the requirements of the Order Establishing Procedure by making vague and unspecified objections to all of FIPUG's requests. TECO's "objections" consist of vague, blanket objections which do not delineate with

any specificity the requests to which TECO objects to nor the facts which justify its request to categorize any of its documents as confidential communications. TECO itself admits that its objections are "broad and protective." Such broad objections are inappropriate. Rule 1.350(b), Florida Rules of Civil Procedure.

5. TECO also appears to be planning to make additional objections at a later, but undisclosed, point in time in further violation of Order PSC-98-0864-PCO-EI. At page 2 of its objections, TECO states that it "will state its particular objection to the request, then identify and offer to produce those documents which the company believes are relevant. . . ." However, the point of the ten-day objection period, as FIPUG understands it, is to resolve discovery disputes on an expedited basis, not to attempt to preserve all objections for some future point in time.

6. Given the expedited time frame in this case, FIPUG must avoid being placed in the untenable position of first being informed of and subsequently attempting to negotiate discovery disputes (about confidentiality or other matters) on or before the July 20 due date for TECO's responses. FIPUG's testimony is due on July 27 and the discovery it seeks is relevant and necessary to the preparation of such testimony.

7. TECO has not complied with the letter or the spirit of the Order Establishing Procedure. This Commission should enter an order requiring TECO to produce all documents which FIPUG has requested on July 20.

8. As to TECO's "motion for protective order", such a motion should be summarily rejected.<sup>1</sup> TECO's "motion" consists of one paragraph with no

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<sup>1</sup>It is unclear if TECO is actually requesting a protective order now. At one point in its pleading, TECO "reserves the right to file a motion [for protective order]."

identification of the documents to which a protective order would apply nor any rationale for protecting the unidentified documents. A general request for a protective order is insufficient. *Flood v. Margis*, 64 F.R.D. 59 (E.D. Wis. 1974). TECO's comparison of FIPUG'S 6 Production requests and 23 questions to the 2300 legal sized pages of interrogatories in "small type" found to be objectionable in the *Slatnick* case (cf TECO motion) is a stretch beyond the tensile strength of credulity.

9. Any protective order which the Commission issues (if such an order were found to be appropriate) must be narrowly drawn. Additionally, any protective order must be specific as to the particular documents it applies to so as not to run afoul of the public records law, Chapter 119, Florida Statutes. TECO has demonstrated no basis for the Commission to issue a protective order.

10. Finally, FIPUG's Request No. 6 asks TECO to produce all documents it produces to Staff in response to Staff's First Request for Production of Documents (Nos. 1-35).<sup>2</sup> In response to Staff's request, TECO raised a specific objection to producing documents responsive to Staff Request Nos. 30-33 and 35. As to each of these requests, TECO claims the requested documents are not relevant.

11. TECO's objection should be rejected and TECO should be required to produce the documents responsive to Staff Request Nos. 30-33 and 35 (and thus responsive to FIPUG Request No. 6). Each of the requests TECO claims is not relevant to this case relates to TECO's financial condition, as viewed by various rating agencies, and TECO's return on equity. Contrary to TECO's objection, such documents are relevant to the matter before the Commission. As FIPUG explained in its response to

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<sup>2</sup> It should be noted that these are the only requests to which TECO makes a specific objection.

TECO's petition seeking cost recovery for the FGD it appears that TECO's base rates are more than sufficient to cover the cost of the FGD, should this be found to be the most cost-effective method for Clear Air Act compliance, without requiring customers to shoulder an additional surcharge. Such documents are relevant to this aspect of the case and should be produced.

**WHEREFORE**, FIPUG requests that the Commission expeditiously enter an order requiring TECO to respond completely to FIPUG's First Request for Production of Documents, Nos. 1-6 on July 20.

*Joseph A. McGlothlin for*  
John W. McWhirter, Jr.

McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
100 North Tampa Street, Suite 2800  
Post Office Box 3350  
Tampa, Florida 33601-3350  
Telephone: (813) 224-0866

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Rief & Bakas, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Telephone: (850) 222-2525

Attorneys for Florida Industrial  
Power Users Group

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing **Response to Tampa Electric Company's Objections and Motion for Protective Order** was furnished by hand delivery (\*) or U.S. Mail to the following this **16th day of July, 1998**:

Grace A. Jaye\*  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Gerald L. Gunter Building, Room 390Q  
Tallahassee, Florida 32399-0850

John Roger Howe  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

Gail Kamaras, Director  
Energy Advocacy Program  
Legal Environmental Assistance  
Foundation  
1114-E Thomasville Road  
Tallahassee, Florida 32303-6290

Lee L. Willis  
James Beasley\*  
Ausley & McMullen  
227 South Calhoun Street (32301)  
Post Office Box 391  
Tallahassee, Florida 32302

  
Joseph A. McGlothlin