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September 23, 1999

VIA HAND DELIVERY

Blanca S. Bayo, Director
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RECORDS AND REPORTING

Re: Docket Number 981890-EU

Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Motion to Compel Tampa Electric Company to Respond to Discovery

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the
aggregate electric utility reserve margins
planned for Peninsular Florida

Docket No. 981890-EU

Filed: September 23, 1999

**The Florida Industrial Power Users Group's Motion to Compel
Tampa Electric Company to Respond to Discovery**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel Tampa Electric Company (TECo) to respond to the discovery requests propounded by FIPUG. As grounds therefor, FIPUG states:

1. This is the third in a series of Motions to Compel which FIPUG has been forced to file (thus needlessly wasting FIPUG time and resources) in regard to totally unfounded objections to discovery in this docket. FIPUG requests that the Commission take prompt action on this motion and in doing so make it absolutely clear to the utilities that these type of delaying tactics will not be tolerated.

1. On September 8, 1999, FIPUG served sixteen (16) interrogatories and six (6) requests for production on TECo.

2. On September 20, 1999, TECo objected to *all* of FIPUG's discovery. TECo did not answer *one* question. Instead, TECo has made frivolous objections in an attempt to avoid fulfilling its discovery obligations. The Commission should immediately order TECo to respond to FIPUG's discovery requests.

TECo's Objection as to the Nature of the Proceeding

3. Just like the objections made by the Florida Reliability Coordinating Council (FRCC) and Florida Power and Light Company (FPL), as to *every single question*, TECo objects on the

grounds that discovery in this docket is not appropriate. This Commission has addressed the nature of this proceeding numerous times and has taken a view contrary to that which TECo continues to espouse.

4. TECo is attempting to repeat once more the arguments that have already been rejected several times by this Commission. Earlier in this proceeding, several utilities challenged the nature of this docket and complained that an investigation should not be conducted as a formal proceeding.

Oral argument was held and the utilities' arguments were rejected:

. . . I find that the Rule [28-106.101(2), exempting investigations from formal evidentiary proceedings] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), *Florida Statutes*, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), *Florida Administrative Code*, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advanced by the utilities and the Florida Reliability Coordinating Counsel would hinder the Public Service Commission's ability to make a well-reasoned decision. *As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.*

. . . The current procedure established for this docket affords these [120.57(1)(b)] rights to all persons whose substantial interests may be affected by the decisions to be made in this proceeding.¹

5. Reconsideration of this order was sought before the full Commission and denied.²

¹ Order No. PSC-99-1274-PCO-EU at 2, emphasis added..

²Order No. PSC-99-1716-PCO-EU.

The Commission reiterated the clear position set forth in its original Order:

The Order [Order No. PSC-99-1274-PCO-EU] unequivocally states that Rule 28-106.101(2), *Florida Administrative Code*, does not supercede the Commission's statutory jurisdiction to proceed with an investigation as a formal evidentiary proceeding. The Order also holds that Rule 25-22.036(3), *Florida Administrative Code*, controls the initiation of this proceeding. . . .

. . . [T]he companies have failed to demonstrate that the Order is based on any mistake of law or fact. The companies' analyses of the Commission's investigatory jurisdiction and their interpretation of the decision of the Administrative Commission is wrong. It cannot seriously be disputed that the Commission may proceed with this investigation as a formal evidentiary proceeding. Section 350.123, Florida Statutes, grants the Commission plenary procedural jurisdiction to effectuate its statutory obligations.³

6. The utilities argued that "discovery could not be permitted, there could be no parties or intervenors, witnesses could not be called to testify and no action or final order could be rendered following the proceeding. . . ." ⁴ The Commission directly rejected this claim: "The companies' position is in direct conflict with the Commission's manifest authority under Chapters 350 and 366, *Florida Statutes*."⁵ The Commission has twice addressed⁶ the claim TECo makes in its discovery objections; such objections should be summarily denied.⁷

³Order No. PSC-99-1716-PCO-EU at 3-4.

⁴Order No. PSC-99-1716-PCO-EU at 4.

⁵*Id.*

⁶ See also, Order No. PSC-99-1884-PCO-EU at 1, where the Commission *again* reiterated the nature of this proceeding: "During the conference, several of the parties raised issues challenging the nature of this docket as a formal evidentiary proceeding. By Order No. PSC-99-1274-PCO-EU, issued July 1, 1999, the Prehearing Officer ordered that the docket proceed as a formal evidentiary proceeding." (footnote omitted).

⁷Despite the Commission's clear orders on the nature of this proceeding, the utilities refuse to relent. Motions to bifurcate the proceeding have been filed by TECo and FPC.

7. The Order Establishing Procedure⁸ governs the conduct of discovery of this case. FIPUG, as a party granted Intervenor status⁹, is entitled to propound discovery. Arguments which have been made and rejected by the Commission provide no basis for TECo's refusal to respond to FIPUG's discovery requests.

TECo's Other Objections

8. First, TECo objects to all of FIPUG's interrogatories because FIPUG inadvertently defined TECo as the FRCC. Of course, this was an obvious error on FIPUG's part which one telephone call from counsel for TECo could have easily resolved. FIPUG hereby responds to TECo's request for clarification on this "issue" by stating that all references to FRCC should have been to TECo.

9. FIPUG Interrogatory No. 1 and Production Request No. 6 use the term "curtailment." Taking a page from FPL's book, TECo objects to these questions on the basis that it does not know what "curtailment" means. To clarify this question, FIPUG hereby informs TECo that "curtailment" as used in FIPUG's discovery refers to service interruptions of interruptible, curtailable and load management customers. Thus, TECo's objection on the basis that it does not understand the meaning of the word "curtailment" is been resolved. TECo also complains that responding to this question would be burdensome and is "make work." While TECo may think this request is "make work" the information sought is highly relevant to the issues in this case (and TECo has not suggested otherwise). The information is solely in TECo's possession and it should be required to respond. It has provided no information as to how or why a response would be

⁸Order No. PSC-99-0760-PCO-EU.

⁹Order No. PSC-99-0838-PCO-EU.

burdensome and this objection should be rejected.

10. TECo makes the same "burdensome" objection to FIPUG Interrogatory Nos. 8 (which asks for buy through information) and Interrogatory No. 10 (which inquires as to when large customers have been asked to reduce load). FIPUG incorporates its discussion above herein.

11. TECo objects to Interrogatory No. 9 (how is Florida impacted by power shortages in other states?") because it is "vague", essentially making the same objection as FPL. TECo's objections are without merit; the question is clear and was intentionally not limited to a particular state.

12. TECo objects to Interrogatory No. 14 (what is the minimum term of a firm wholesale sale) and Interrogatory No. 15 (minimum notice before commitment to a wholesale sale) on the basis of relevance. However, this information is highly relevant. The way TECo's wholesale sales are factored into its reserve margin calculation and whether capacity available for the retail ratepayer is being used by wholesale customers is very germane to the Commission's inquiry in this docket.

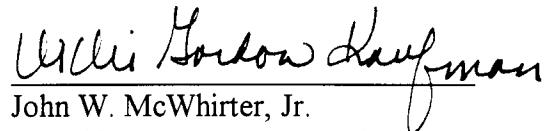
14. TECo objects to FIPUG Production Request Nos. 1 (protocol dispatchers rely upon to exercise curtailments or buy throughs) and 2 (operating orders governing dispatchers) on the basis of relevance. Such seek information that is highly relevant to this docket which is solely in the possession of TECo. How the system is dispatched and when curtailments and/or buy throughs are required is directly related to whether or not the reserve margin is adequate.

15. TECo objects to Production Request No. 3 (logs) on the basis of relevance, addressed above, as well as claiming the request is burdensome. This relevant information is solely in TECo's possession and TECo has in no way demonstrated why it would be burdensome to produce it. TECo makes a similar objection to Production Request No. 4 (logs, reports related to curtailments) which

is similarly without merit.

15. In sum, TECo's objections are nothing more than an attempt to further delay this proceeding and to withhold relevant information from a party attempting to prepare for hearing. The Commission should summarily deny these objections and warn TECo(as well as the other utility parties) that such delaying tactics will not be tolerated.

WHEREFORE, FIPUG requests that the Commission enter an order requiring TECo to promptly respond to FIPUG's discovery requests.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Testimony and Exhibits of James A. Ross on behalf of the Florida Industrial Power Users Group has been furnished by U.S. mail and or hand-delivery (*) on this 23rd day of September, 1999 to the following:

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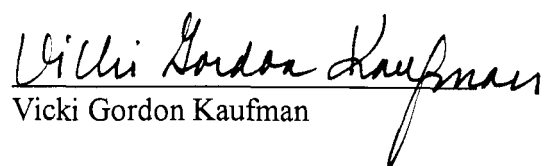
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