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October 1, 1999

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
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RECORDS AND REPORTING

Re: Docket Number 990037-EI

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:

- ▶ Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1778-FOF-EI

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

AFA	_____
APP	_____
CAF	_____
CMU	_____ VGK/wb
CTR	_____
EAG	_____ <i>One</i>
LEG	_____ <i>etc.</i>
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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

11869-99 → 11869 OCT 1 1999  
FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Tampa Electric  
Company to close Rate Schedules  
IS-3 and IST-3, and approve new  
Rate Schedules GSLM-2 and GLSM-3.

Docket No. 990037-EI

Filed: October 1, 1999

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**The Florida Industrial Power Users Group's Petition for Formal Proceeding  
on Proposed Action in Order No. PSC-99-1778-FOF-EI**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.201, Florida Administrative Code, files this Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1778-FOF-EI. As grounds therefor, FIPUG states:

**Introduction**

1. The name, address and telephone number of Petitioner is:

Florida Industrial Power Users Group  
c/o John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33601-3350  
1-813-224-0866

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, Florida 32301  
1-850-222-2525

2. Petitioner's representatives, which shall be the address for service purposes during the course of the proceeding is:

John W. McWhirter, Jr.  
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, P.A.  
400 North Tampa Street, Suite 2450  
Tampa, Florida 33601-3350

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### **Substantial Interests**

3. In the proposed order which is the subject of this petition, the Commission proposes to close the IS-3 and IST-3 rates to new customers. It further proposes to create new GSLM-2 and GSLM-3 rate schedules. Customers taking service under these new schedules will receive a credit on their electric service. This credit will be recovered from all other customers via a conservation surcharge.

4. FIPUG is composed of a group of large industrial consumers. The cost of electricity comprises the largest variable cost of doing business to FIPUG members and often impacts their ability to compete in the global marketplace as well as whether they will expand their current operations in the state of Florida. Some members of FIPUG are on the IS-3 and IST-3 rate schedule. Other FIPUG members are served by TECo's firm rate schedules. All FIPUG members pay the conservation surcharge through which TECo will collect the amount of the credit provided under the GSLM-2 and GSLM-3 rates. FIPUG's substantial interests are affected by the action the Commission proposes to take in this docket.

### **How Notice of Agency Action was Received**

5. The cardinal principal governing non firm load was established in Order No. 22231 in Docket 870407-EI; it is as follows: "It is assumed that the sum of the firm load which can be reliably served and the maximum non-firm load at the time of peak should not exceed the capacity

of the generating system." FIPUG non-firm customers have been interrupted or subjected to unprecedented purchased power costs over the last 24 months. On information and belief, these interruptions and extraordinary purchased power costs have come about because of TECo's failure to build sufficient capacity to meet the demand of its firm and non-firm customers and because its transactions in the competitive wholesale market have snubbed the cardinal principle. FIPUG demands strict proof that TECO's generating capacity exceeds the maximum firm and non-firm load at the time of summer and winter peaks.

6. In Docket 920324-EI, TECo's last general rate case, FIPUG challenged the PSC staff proposal to convert Interruptible Rate Schedules into DSM programs. FIPUG offered testimony in that docket that the cost-effectiveness test used to establish such programs was flawed in that it ignores price elasticity by assuming that non-firm industrial customers with large electric bills will readily convert to firm service and pay the utility more rather than moving their electrical load to less expensive utilities, reverting to less expensive self-generation or going out of business. In that case, the DSM conversion was not implemented. Commission Order No. PSC 93-0165-FOF-EI postponed consideration of FIPUG's challenge until the next general rate case when a new cost of service study could be conducted and analyzed. At that time, all rate schedules would come under review and FIPUG's challenge to the basic cost effectiveness assumption could be fairly considered. The proposed agency action in this docket finesses that directive and utilizes the faulty test without considering its alleged defects.

#### **Disputed Issues of Fact**

7. Facts in dispute include, but are not limited to, the following:
  - a. Did TECo fail to submit proof that it has adequate generating capacity to

meet the demands of its firm and non-firm customers at the time of system peaks?

- b. Did Order No. PSC-99-1778-FOF-EI fail to determine the practical maximum level of non-firm load prior to approving additional non-firm load?
- c. Was the cost-effectiveness test used in this docket appropriate?
- d. If additional non-firm load is needed, is it in consumers' interest to charge both firm and non-firm customers more rather than offering additional load under the IS-3 schedule at no cost to firm customers and no increase to the new non-firm customers? TECo would still receive additional revenue without the requirement to add new plant to serve the load.
- e. Does allowing non-firm load to exceed installed capacity provide a disincentive to the installation of adequate capacity?
- f. Is it proper to approve new non-firm load without placing any constraints on wholesale transactions by TECo?
- g. Should the cost-effectiveness test be modified to recognize the increased risk placed upon non-firm customers by the adoption of Rule 25-6.035, Florida Administrative Code, in 1996 which subjects non-firm customers to the risk of interruption to serve the firm demands of the customers of any utility in peninsula Florida?
- h. Does TECo violate its regulatory bargain with non-firm customers when it classifies them as "operating reserves" to meet its reserve margin

commitment to other utilities under the provisions of Rule 25-6.035(4), Florida Administrative Code?

- i. Should retail non-firm customers be required to pay higher prices for purchased power when there is a forced outage of a TECo power plant due to the fact that Rule 25-6.035(5), Florida Administrative Code, enables other Florida utilities to charge TECo higher peak period market rates rather than cost-based emergency rates TECo charges the other utilities when it diverts generators in the retail rate base away from its non-firm customers to meet demands of other utilities' customers?
- j. Whether collection of the GSLM-2 and GSLM-3 surcharge through the conservation cost recovery clause permits TECo to collect revenue for the provision of firm service while providing inferior service?
- k. Whether the facilities charge proposed in tariff sheet 7.760 violates the requirements of section 366.06, *Florida Statutes*, that "actual legitimate costs" be used for ratemaking by the Commission.

**Ultimate Facts Alleged and Rules and Statutes Entitling Petitioner to Relief**

8. Ultimate facts alleged include, but are not limited to, the following:
  - a. Whether the IS-3 and IST-3 rates should be closed to new customers;
  - b. Whether the GSLM-2 and GSLM-3 rates should be approved.
9. Rules and statutes entitling Petitioner to relief include, but are not limited to, the following:
  - a. Section 366.041, Florida Statutes;

- b. Section 366.06, Florida Statutes;
- c. Rule 28-106.201, Florida Administrative Code;
- d. Rule 25-6.035, Florida Administrative Code;
- e. Rule 25-6.0438, Florida Administrative Code.

**Demand for Relief**

- 10. FIPUG demands the following relief:
  - a. That TECo's interruptible Service-3, Interruptible Service Time of Use-3 and Interruptible Standby and Supplemental Service-3 rate schedules not be closed to new customers;
  - b. That TECo's proposed General Industrial Load Management Rider (GSLM-2) and General Service Industrial Standby and Supplemental Load Management Rider (GSLM-3) be rejected in favor of adding additional load under the provisions of IS-3 if additional non-firm load is justified and needed;
  - c. That TECo place restrictions on wholesale transactions which imperil service to non-firm customers as a condition to closing the IS-3 rate schedule or opening the additional non-firm schedules at a higher price to firm and non firm customers.
  - d. If the Commission finds that non-firm load presently or in the future will exceed installed capacity in violation of TECo's commitment in Docket 870408-EI what remedies should be provided to protect the substantial interests of interruptible customers?
  - e. That the Commission provide such other relief as it deems appropriate.

**WHEREFORE**, FIPUG requests that the Commission schedule a hearing on this matter and grant the relief described herein.

*Willie Gordon Kaufman*

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Attorneys for the Florida Industrial  
Power Users Group



## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Petition for Formal Proceeding on Proposed Action in Order No. PSC-99-1778-FOF-EI has been furnished by (\*) hand delivery or U.S. Mail to the following this 1<sup>st</sup> day of October 1999:

(\*) Bob Elias  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

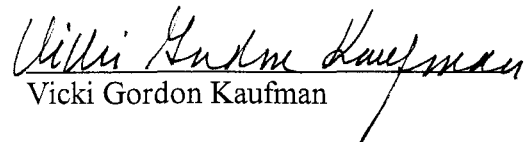
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