

# AUSLEY & McMULLEN

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May 3, 2002

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: Petition of City of Bartow, Florida, Regarding a Territorial Dispute with Tampa Electric Company, Polk County, Florida; FPSC Docket No. 011333-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Dismiss and Answer in Opposition to the City of Bartow's Motion for Continuance of Final Hearing and Adjustment of Procedural Schedule.

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-DATE

04844 MAY-3 2002

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of City of Bartow, Florida, )  
Regarding a Territorial Dispute with Tampa )  
Electric Company, Polk County, Florida. )  
\_\_\_\_\_ )

Docket No. 011333-EU  
Filed: May 3, 2002

**TAMPA ELECTRIC COMPANY'S MOTION TO DISMISS  
AND ANSWER IN OPPOSITION TO  
THE CITY OF BARTOW'S MOTION FOR CONTINUANCE  
OF FINAL HEARING AND ADJUSTMENT  
OF PROCEDURAL SCHEDULE**

Pursuant to Rule 28-106.204, Tampa Electric Company ("Tampa Electric" or "Company"), hereby responds to the motion of the city of Bartow ("Bartow") for continuance of the hearing scheduled in this proceeding for July 18, 2002, and for suspension of the procedural schedule. For the reasons set forth below, Tampa Electric respectfully submits that Bartow should be required to move forward to meet its burden of proof under the existing procedural schedule or the Petition initiating this proceeding should be dismissed, and says:

1. On April 25, 2002, Bartow filed its Motion for Continuance requesting that the procedural schedule established in this proceeding pursuant to Order No. PSC-02-0442-PCO-EU be suspended until August 2002.
2. In support of its motion, Bartow alleges that the final configuration of the Old Florida Plantation ("OFP") property is essential to determination of the issues in this case.
3. Bartow further alleges that, for various reasons, the developer of the OFP property will not have a final configuration plan for the development until some time after

August of 2002. Therefore, Bartow argues, the procedural schedule should be suspended until such time as the OFP developer's plans have been finalized.

4. Tampa Electric respectfully submits that the justification offered by Bartow for suspending the procedural schedule in this matter is nothing more than a "red herring" intended to distract attention from the factual and legal infirmities of its position.
5. The precise location of the existing service territory boundary established by the Commission in Order No. 15437 is not in dispute. The issue raised by Bartow is whether the service territory boundary should be relocated to permit Bartow to serve the entire OFP development. Bartow has asserted that it is ready, willing and able to provide electric service to the entire OFP development. This assertion was not conditioned or premised on any particular development configuration. Therefore, Bartow should be prepared to demonstrate to the Commission that it is entitled, as a matter of fact and law, serve the entire development, regardless of the final configuration adopted by the OFP developer.
6. Tampa Electric stands ready to serve the portion of the OFP property that is located in its existing service territory. If the Commission should determine that Tampa Electric is the more appropriate utility to provide electric service to all of the OFP property, then the Company is ready, willing and able to do so. The Company has a substation located across the street from the OFP property with significant available capacity as well as distribution facilities that surround the portion of the OFP property in its service territory. Tampa Electric's ability and willingness to serve all or part of the OFP property is not a function of the final configuration adopted by the OFP developer.

7. Tampa Electric is prepared to move forward with the established procedural schedule. If Bartow, as the moving party in this proceeding, is not prepared to move forward, then its petition should be dismissed. Holding the procedural schedule in abeyance for an indeterminate period would be a waste of the Commission's valuable time and resources. There is no guarantee that the revision of the OFP development plan will be complete by August or that it will not undergo subsequent revisions even if the current revision is completed by August.

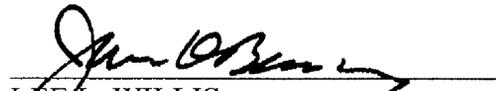
WHEREFORE, Tampa Electric respectfully requests that Bartow's Motion for Continuance be denied and that the Commission dismiss the Petition due to Bartow's failure to state any ground for further Commission action at this time.

DATED this 3<sup>rd</sup> day of May 2002.

Respectfully Submitted,

HARRY W. LONG, JR.  
Assistant General Counsel  
Tampa Electric Company  
Post Office Box 111  
Tampa, Florida 33601  
(813) 228-1702

And

  
\_\_\_\_\_  
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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

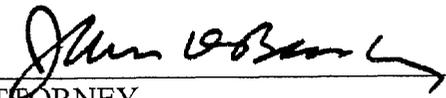
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss and Answer in Opposition to the City of Bartow's Motion for Continuance of Final Hearing and Adjustment of Procedural Schedule, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (\*) on this 3<sup>rd</sup> day of May, 2002 to the following:

Ms. Adrienne Vining\*  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. Joseph J. DeLegge  
City of Bartow  
P. O. Box 1069  
Bartow, FL 33830-1069

Mr. Davisson F. Dunlap, Jr.  
Dunlap & Toole, P.A.  
2057 Delta Way  
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\_\_\_\_\_  
ATTORNEY