

ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Prudence review to)	DOCKET NO. 960409-EI
determine regulatory treatment)	
of Tampa Electric Company's Polk)	FILED: May 9, 1996
Unit.)	
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MOTION TO COMPEL DISCOVERY

The staff of the Florida Public Service Commission by and through its undersigned counsel move the Commission to compel Tampa Electric Company (TECO) to respond to Staff's First Request for Production of Documents to Tampa Electric Company. (Nos. 6 and 7).

1. On April 12, 1996, the staff of the Florida Public Service Commission served TECO with Staff's First Request for Production of Documents to Tampa Electric Company (Nos. 1-9).

2. On April 22, 1996, TECO filed its Objections and Motion for Protective Order relative to Staff's First Request for Production of Documents to Tampa Electric Company (Nos. 1-9). Staff contacted TECO regarding this Motion and was informed that it was preliminary in nature and was filed in order to comply with the

ACK _____
 AFA _____ 10 day notice requirement which was discussed at the April 9, 1996,
 APP _____ issue identification meeting in this docket and set forth in Order
 CAF _____
 CNU _____ No. PSC-96-0567-PCO-EI, issued April 30, 1996. TECO also
 CTR _____ represented to staff that it would produce for inspection and copy
 EAG _____ all relevant documents which reasonably relate to staff's request.
 ECH _____
 LHM 5
 COT _____
 PCH _____
 SEC 1
 WAS _____

DOCUMENT NUMBER-DATE
 05201 MAY-96
 FPSC-RECORDS/REPORTING

3. On May 2, 1996, TECO filed Tampa Electric Company's Written Response And Objections to Staff's First Request for Production Of Documents to Tampa Electric Company. Therein, TECO specifically objected to Staff's First Request for Production of Documents Nos. 6 and 7.

4. Request Number 6 asks TECO to produce "...copies of all internal memos and correspondence with tax consultants, CPA's, or the Internal Revenue Service dealing with the use of a seven year tax life for the Polk IGCC (Integrated Gasified Combined Cycle) Unit."

5. Request Number 7 asks TECO to produce "...copies of all internal memos and correspondence with tax consultants, legislators or their assistants, legislative committees, or the Internal Revenue Service concerning revisions to IRC (Internal Revenue Code) Section 29 through legislative changes."

6. In the cost-effectiveness analyses offered to support its assertion that the construction of Polk Unit 1 was prudent, TECO relied on a 7-year tax life and IRC Section 29 credits for the Polk IGCC Unit.

7. TECO objects to Staff's First Request For Production of Documents (request Nos. 6 and 7) on the extremely generalized grounds that responding to these requests would be harmful to TECO and its customers. TECO does not explain how production of these documents might be harmful, how each request is privileged, or otherwise not discoverable.

8. Further, TECO's pleading ignores the protection afforded proprietary, business information via specified confidential treatment pursuant to Section 366.093, Florida Statutes.

9. Request Nos. 6 and 7 clearly and specifically set forth the types of documents sought and the subject matter contained therein. The information contained in the documents requested is relevant and clearly falls within the scope of discovery for this docket. Rules 1.280 and 1.350 of the Florida Rules of Civil Procedure allow the discovery of any document relevant to the subject matter of a pending action. See Bystrom v. Whitman, 488 So.2d 520, 523 (Fla. 1986). The rules pertaining to discovery should be broadly interpreted. See Jones v. Seaboard Coast Line Rr. Co., 297 So.2d 861 (Fla. 2nd DCA 1974)

10. The information contained in the documents that staff requested does not fall under the protection of any privileged communication recognized by the Florida Rules of Civil Procedure.

11. Additionally, TECO's objections are so overly broad that they preclude any remedy. TECO does not explain whether or in what way these requests are vague, imprecise, or utilize terms that are subject to multiple interpretations.


12. In lieu of formally producing the documents requested by Staff's First Production of Document Requests Numbers 6 and 7, TECO offers to produce the appropriate company representative to informally discuss the subject matter of these two requests and to informally respond to questions in an effort to satisfy Staff's interest. Staff, however, believes the documents associated with Staff's Production of Document Requests Numbers 6 and 7 are relevant to the issue at hand and their production is necessary to enable staff to evaluate the prudence of TECO's Polk Unit.

13. TECO's willingness to provide the requested information informally, strongly suggests that the information is not exempt from discovery by virtue of the attorney/client privilege, work product privilege, or other applicable privilege.

14. Staff submits that if TECO can provide this information in the manner proposed by the company, then obviously staff's request is not unduly burdensome, expensive, oppressive, or excessively time consuming.

WHEREFORE, staff moves the Florida Public Service Commission for an order compelling Tampa Electric Company to produce the documents requested in Staff's First Request For Production of Documents to Tampa Electric Company Nos. 6 and 7.

Respectfully submitted,


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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that one true and correct copy of Staff's Motion to Compel Discovery have been furnished by Hand Delivery, to Mr. Lee Willis, Macfarlane Ausley Ferguson and McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301, on behalf of Tampa Electric Company and that one true and correct copy has been furnished by U. S. Mail this 9th day of May, 1996, to the following:

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