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December 3, 2001

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
& Administrative Services
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Territorial Dispute Between City of Bartow
and Tampa Electric Company ("TECO")
Case No. 011333-EU

Dear Ms. Bayo:

Enclosed with this letter are the original and 16 copies of a Response to Bartow to TECO's Motion to Stay Discovery. Please file the original of this pleading in the Commission's file for this matter.

Please then stamp one copy with the date and time filed and return it to me in the enclosed stamped, addressed envelope.

Thank you for your assistance.

Sincerely yours,

Davisson F. Dunlap, Jr.
Davisson F. Dunlap, Jr.

cc Mr. Richard A. Williams
Mr. Frederick M. Bryant

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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: 011333-EU

RESPONSE OF BARTOW TO TECO'S MOTION TO STAY DISCOVERY

The City of Bartow, Florida ("Bartow"), by and through its undersigned attorneys, responds to Tampa Electric Company's ("TECO") Motion to Stay Discovery as follows:

1. A clear and specific reason must be offered as a basis for delaying proceedings by virtue of a stay of discovery or trial. State v. Antonucci, 590 So. 2d 998 (Fla. 5th DCA 1991). Where the pleadings and/or the record are devoid of such a justification, a trial court has no discretion to delay proceedings regardless of whether those proceedings are civil or criminal. Id. Any consideration of a stay of discovery proceedings must be weighed against the plaintiff's legitimate need to proceed expeditiously. Kerben v. Intercontinental Bank, 573 So. 2d 976 (Fla. 5th DCA 1991) *citing* Arden Way Assoc. v. Boesky, 660 F.Supp. 1494 (S.D.N.Y 1987). In the rare instance that a stay of discovery occurs, such a stay must be structured in the least intrusive manner with reasonable and finite time constraints. Id.

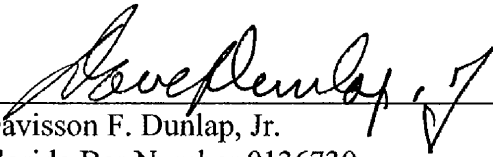
2. In its Motion to Stay Discovery, TECO fails to provide any clear or specific reason why a stay should be granted. Instead, TECO makes a blanket assertion that the Motion to Stay Discovery is "offered to avoid uneconomic waste of time and expense." TECO fails to offer well grounded reasons for a stay of the proceedings, but instead attempts to reargue the merits of their pending Motion to Dismiss. It appears that TECO urges this Commission to presuppose the granting of their Motion to Dismiss as a rationale to stay the proceedings.

3. A stay of discovery should not be granted in this instance. Not only has TECO failed to articulate a basis for such a stay, but Bartow would be unduly prejudiced by such a stay.

Bartow desires the expeditious resolution of this matter by the Commission. TECO's request for a delay of the proceedings is self-serving. TECO's requested stay serves only to prevent Bartow from the expeditious preparation of the case.

4. The facts, taken in the light most favorable to Bartow, support the conclusion that a stay of the discovery proceedings would function to prejudice Bartow by forcing it to initiate necessary discovery in a unnecessarily delayed fashion as well as the likely consequence of delay of a hearing on the merits.

WHEREFORE, the City of Bartow respectfully requests that the Motion to Stay Discovery filed by Tampa Electric Company be denied.



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Attorneys for Petitioner, City of Bartow

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response of Bartow to TECO's Motion to Dismiss has been furnished by United States mail on this 3rd day of November, 2001, to:

Mr. Harry W. Long, Jr.
Assistant General Counsel
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601

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Division of Legal Services
Florida Public Service Commission
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