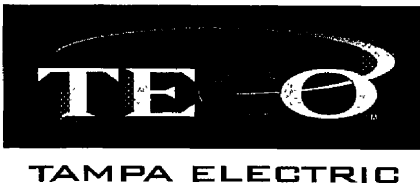


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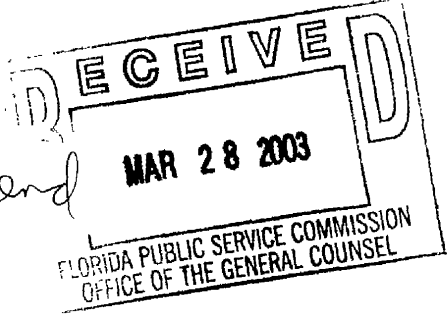


Janice,

March 27, 2003 Please send

to CCA

Thanks,
AEV



Ms. Adrienne Vining
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 011333-EU – Petition of City of Bartow to Modify Territorial Agreement or, in the Alternative, to Resolve Territorial dispute with Tampa Electric Company in Polk County.

Dear Ms. Vining:

On March 20, 2003, the City of Bartow provided responses to Staff's 1st Data Request, which were propounded on February 17, 2003. Tampa Electric is concerned that several of Bartow's responses were either incomplete or misleading. Therefore, Tampa Electric is compelled to submit the following observations for the Staff's consideration.

Bartow Response to Staff Data Request Nos. 2 & 5

Bartow has provided no clear explanation of why it has so obviously over-invested in substation capacity in the vicinity of the OFP property. As explained in Tampa Electric's March 20th response to Staff Data Request No. 1, the total OFP load at full build out is estimated to be 30 MVA. Of that total, less than 6 MVA is estimated to reside within Bartow's current service territory at full build out. However, Bartow reports in response to Staff Data Request No. 5 that it has spent over \$2million since 1996 for substation expansion in the area of the OPF property, resulting in excess transformer capacity of over 84 MVA. Excess capacity of this magnitude could only have been installed in anticipation of substantial load and/or service territory expansion, possibly including OFP load within Tampa Electric's current territorial boundary This is precisely the kind of uneconomic duplication of facilities that the existing service territory agreement was intended to avoid. Even with this significant over investment in substation capacity, Bartow indicates that it will still have to spend another \$585,000 to \$645,000 just to build new distribution facilities to connect these distant substations to load at the OFP property.

In contrast, Tampa Electric is in a position to serve the entire OFP development, at full build out, with no significant additional investment in distribution facilities outside

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of the OFP development. The Company's Gordonville Substation is across the street from the OFP property and has sufficient available capacity to serve the first several years of OFP property development. In addition, the estimated \$800,000 upgrade to the Gordonville substation that Tampa Electric would eventually have to make to serve the final phase of the OFP build out is modest in comparison to \$2 million of unneeded substation capacity expansion already undertaken by Bartow.

Bartow Response to Staff Data Request No. 3

In Data Request No. 3, the Staff asked Bartow to explain the legal underpinning for its assertion of authority to provide electric service to City-affiliated facilities, such as police and fire stations, that Bartow proposes to locate north of its existing electric service territory boundary. In response, Bartow offered two arguments in support of its position, both of which suggest a profound misunderstanding of relevant law and Commission precedent.

First, Bartow argues that the existing service territory agreement, as embodied in Commission Order No. 15437¹, allows Bartow to serve City-owned facilities in Tampa Electric's service territory. This assertion is remarkable in light of Bartow's acknowledgement, at the outset of its response, that:

"Most territorial agreements have a clause in them that specifically states that the parties to those agreements reserve the right to service their own facilities located outside of the territorial boundaries".

Of course, the existing territorial agreement between Bartow and Tampa Electric contains no such general provision and at no time did Tampa Electric agree to any such general reservation of rights. In Section 2.4 of the Service Territory Agreement, Tampa Electric is specifically given the right to "continue to provide retail electric service to existing and future phosphate customers and/or customers served at transmission voltage (69 Kv and above) in the area of Polk County reserved for Bartow". In Section 2.6 of the Service Territory Agreement, it was agreed that "nothing in this Agreement is intended to affect the power plants, transmission lines, or substations of one party which are now located or may in the future be located in the service area of the other party..." (Emphasis added). The agreement, as adopted by the Commission, is quite specific as to the rights reserved by the parties to serve their own facilities located in the service territory of the other party. City-owned facilities such as police stations, fire stations, lift stations and streetlights are not among the categories of facilities listed in Section 2.6. As Bartow itself recognizes, if the Commission had intended to authorize Bartow to serve these kinds of City-owned facilities in Tampa Electric's service territory, then that reservation of authority would have been explicitly stated.

¹ Issued on December 11, 1985 in Docket No. 850148-EU.

In the absence of any such express or implied reservation of rights, the City argues that the provision of electric service to its facilities located outside of its service territory would amount to simple self-service rather than the provision of electric service at retail which would be prohibited under the existing service territory agreement. However, this reasoning is both circular and transparent. The police stations and fire stations that the City proposes to build in Tampa Electric's service territory would be indistinguishable from any other retail load in Tampa Electric's service territory. These facilities would be the ultimate consumers of the electric energy delivered. Therefore, such deliveries could only be described as retail electric service. Tampa Electric has planned its generation, transmission and distribution facilities and has made the necessary financial investments to meet this anticipated retail load. In this context, the City of Bartow is not just any other retail customer who might have the option to self-generate. Instead, the City is a neighboring electric utility that is bound by a service territory agreement that does not give it the right to serve these facilities in Tampa Electric's service territory. Bartow cannot justify service to such facilities in Tampa Electric's service territory by pretending that its obligations under the currently effective service territory agreement don't exist. Moreover, since Bartow has no electric distribution facilities in Tampa Electric's service territory, service to such proposed facilities by Bartow would necessarily involve precisely the uneconomic duplication of Tampa Electric's existing distribution facilities that the current Service Territory Agreement is intended to avoid.

Bartow's second argument is premised on a basic misunderstanding of Commission Order No. PSC-97-1132-FOF-EU² concerning the Service Territory Agreement between the City of Homestead, Florida (Homestead), and Florida Power and Light (FP&L). At issue in that case was the proper interpretation of the following language that appeared in Paragraph 8 of the Homestead/FP&L Service Territory Agreement:

"The City's right to furnish service to the City-owned facilities, or those owned by agencies deriving their power through and from the City (including but not limited to the Homestead Housing Authority) may be served by the said City, notwithstanding that the said facilities are located within the service territory of [FPL]".

Homestead contended that non-governmental facilities owned and operated by third parties but built on land leased from the City and located in FPL's service territory qualified as "City-owned facilities" that Homestead was entitled to serve pursuant to the above-quoted language in the Homestead/FP&L Service Territory Agreement. In rejecting Homestead's contention, the Commission concluded that the City, itself, must carry out some proprietary function on the property in question in order for the facility to

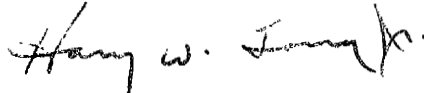
² Issued in Docket No. 970022-EU on September 29, 1997; 1997 Fla. PUC LEXIS 1249, 97 FPSC 9:302.

qualify as a "City-owned facility". Bartow suggests that since it will own and operate the facilities that it proposes to build in Tampa Electric's service territory, unlike the City of Homestead, the Commission decision in the Homestead case somehow provides legal support for Bartow's assertion of authority to serve such facilities. The fallacy of this assertion is obvious. The Commission decision in the Homestead case turned on the interpretation of the exception for "City-owned facilities". No such exception exists in the Tampa Electric/Bartow Service Territory Agreement. Therefore, the question of whether or not the facilities that Bartow intends to build in Tampa Electric's service territory are "City-owned facilities" is irrelevant. As discussed above, the existing Tampa Electric/Bartow Service Territory Agreement gives Bartow no such right.

Thank you for your time and attention in this matter.

Sincerely,

TAMPA ELECTRIC COMPANY



Harry W. Long, Jr.
Assistant General Counsel

cc: Jim Beasley (Via Federal Express)
David Dunlap (Via U.S. Mail)