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June 6, 2003

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: Application of Cargill Fertilizer, Inc. to engage in self-service wheeling of waste heat cogenerated power to, from and between points within Tampa Electric Company's Service Territory; FPSC Docket No. 020898-EQ

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Response of Tampa Electric Company to Cargill Fertilizer, Inc.'s Motion to Convene Mediation, Lift the Procedural Abatement, Compel Tampa Electric Company to Respond to Outstanding Discovery, and Establish Procedural Schedule. The response also addresses Cargill's Request for Oral Argument.


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.

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FPSC-BUREAU OF RECORDS

Sincerely,



James D. Beasley

JDB/bjd  
Enclosure

cc: All Parties of Record (w/encls.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Cargill Fertilizer, Inc. )  
to engage in self-service wheeling of waste )  
heat cogenerated power to, from and )  
between points within Tampa Electric )  
Company's service territory. )  
\_\_\_\_\_ )

Docket No. 020898-EQ  
Filed: June 6, 2003

**RESPONSE OF TAMPA ELECTRIC COMPANY TO CARGILL FERTILIZER, INC.'S MOTION TO CONVENE MEDIATION, LIFT THE PROCEDURAL ABATEMENT, COMPEL TAMPA ELECTRIC COMPANY TO RESPOND TO OUTSTANDING DISCOVERY, AND ESTABLISH PROCEDURAL SCHEDULE**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric") hereby responds to the May 30, 2003 Motion filed by Cargill Fertilizer, Inc. ("Cargill"), to Convene Mediation, Lift the Procedural Abatement, Compel Tampa Electric Company to Respond to Outstanding Discovery, and Establish Procedural Schedule (the "Motion") and Cargill's May 30<sup>th</sup> Request For Oral Argument filed simultaneously with its Motion. As discussed in more detail below, Tampa Electric is willing to participate in focused mediation that is structured to address the few issues left unresolved after months of intensive settlement discussions that the parties have already conducted. In the alternative, Tampa Electric would support the immediate reinstatement of the procedural schedule and associated discovery activities. Further, as explained below, Cargill's attempt to compel responses to discovery is procedurally inappropriate since the procedural schedule and all associated discovery activities have been suspended. If Cargill has a good faith interest in pursuing focused, formal mediation efforts, then the procedural schedule and associated discovery should continue to be held

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in abeyance. Tampa Electric sees no value in pursuing mediation while attempting to respond to discovery requests and preparing for litigation. Tampa Electric continues to object to certain of Cargill's discovery requests but would agree, if the procedural schedule is reinstated, to provide some of the data at issue pursuant to a non-disclosure agreement crafted to ensure that the data is not disclosed to Cargill's employees and affiliates engaged in the wholesale marketing function. In support thereof, Tampa Electric says:

**I.  
Request For Mediation**

1. In early December 2002, Tampa Electric presented Cargill with two distinctly different proposals for addressing its desire to use its generation resources in a manner that would minimize service interruptions and reduce the cost associated with optional provision power purchased for Cargill pursuant to the applicable tariff. Cargill expressed a willingness to discuss the proposal involving self-service wheeling but, to date, Cargill has been unwilling to discuss the alternative advanced by Tampa Electric.
2. Since December 2002, the parties have been continually engaged in intensive settlement discussions without the direct involvement of their respective legal representatives. This effort, which has consumed hundreds of person-hours, appears to have resulted in the resolution of all but a few, well-defined issues as opposed to the extensive list of issues now proposed by Cargill for formal mediation.
3. Tampa Electric does not view mediation as an extension of the litigation process nor as a "dress rehearsal" for litigation. Instead, Tampa Electric views mediation

as an alternative to litigation that is useful only if the parties are willing to put aside their respective litigation positions in search of a negotiated solution. Given the significant time and effort already expended by the parties and the success achieved thus far, mediation, as a formal extension of the settlement process, makes sense only if it can be focused on the few issues left unresolved by the informal settlement process. To adopt a needlessly broader scope for formal mediation would be a senseless waste of the Commission's and the Parties' valuable time and resources. Tampa Electric sees no value in renegotiating issues that have already been exhaustively discussed and apparently resolved in the informal process.

4. In light of the circumstances described above, Tampa Electric has advised Cargill that it would be willing to support a focused and limited mediation effort to address the differences that remain unresolved by the informal settlement process. In addition, Tampa Electric would want to include in any such mediation session a discussion of the alternative to self-service wheeling proposed by Tampa Electric to Cargill in December of last year. A one-day mediation session limited to the above-mentioned issues should provide the parties with an adequate opportunity to resolve the few issues that separate them. If significant progress is made toward final settlement during this proposed one-day mediation session, Tampa Electric would be willing to devote additional time and resources to further mediation. However, if Cargill now wishes to pursue mediation with a focus on its proposed litigation position, the parties and the Commission would be

better served by simply reinstating the procedural schedule and allowing Cargill an opportunity to meet its burden of proof in this proceeding.

## **II. Motion To Compel**

5. Cargill's Motion to Compel is inconsistent with any genuine interest in settling the matters at issue in this proceeding through mediation. The Commission's willingness to hold the procedural schedule in abeyance was based, in part, on the recognition that the status quo will be maintained by merit of Tampa Electric's continued provision of self-service wheeling to Cargill pending a final Commission decision on Cargill's request for permanent self-service wheeling service, and Cargill's undertaking to compensate ratepayers for any net cost associated with self-service wheeling during this interim period. Since both Cargill and ratepayer interests are protected, there is no reason to reinstate the procedural schedule until the settlement/mediation process has run its course. Cargill's suggestion that mediation efforts should be conducted on a parallel path with discovery and the preparation of testimony is inefficient and wasteful of everyone's time and resources. If mediation is to be pursued, then Cargill's Motion to Compel should be denied on the ground that it is premature. If, however, Cargill is unwilling to pursue focused mediation as suggested by Tampa Electric and, instead, the procedural schedule is to be reinstated, Tampa Electric hereby reiterates its objection to certain of the discovery requests propounded by Cargill.

### Requests For Admissions

6. Request For Admission No. 3 asks Tampa Electric to admit the following:

*Line 5 of TECo's quarterly "impact of Cargill Self-Service Wheeling (SWW) Pilot" shows a reduction in Conservation Cost Charges collected from Cargill. Admit that TECo projects that it saves \$12,536,000 in fuel costs as a result of conservation programs and that SSW reduces TECo's fuel costs.*

7. Tampa Electric objects to Request For Admission No. 3 on the grounds that the request, as written, has no temporal element and, therefore, is vague, ambiguous and otherwise unintelligible. The savings alluded to in the request is obviously unique to a specific period. However, Tampa Electric is not in a position to either admit or deny the request unless that period is specified in the request. At Paragraph 16 of its Motion, Cargill attempts to provide the specificity necessary to make Request for Admission No. 3 coherent and intelligible. The provision of this essential specificity in its Motion To Compel does not cure the fundamental deficiency in the request as originally propounded and Tampa Electric has not been provided with a revised request. Cargill can't reasonably attempt to compel a response to a question that it has not yet asked.

8. Request For Admission No.5 asks Tampa Electric to admit the following:

*Admit that TECo proposes to charge its retail customers \$945,190 during calendar year 2003 to promote emergency generation at firm commercial and industrial facilities in order to reduce weather-sensitive peak demand.*

9. Tampa Electric objects to Request For Admission No. 5 on the ground that the request is vague and ambiguous with regard to its reference to "emergency generation". Once again, Cargill has belatedly attempted to provide the information necessary to make this request intelligible in its Motion to Compel.

At Paragraph 18 of its Motion, Cargill attempts to put its reference to “emergency generation” into a meaningful context. However, this belated attempt to explain the intent behind the request only serves to underscore the deficiency of the request as originally propounded. Tampa Electric has not received a revised request and cannot reasonably be expected to respond to a question that has not yet been asked.

### **Interrogatories**

10. In interrogatory Nos. 4-6 Cargill seeks information regarding Tampa Electric’s marginal fuel costs. Tampa Electric objects to providing such information on the grounds that the requested information is proprietary, commercially sensitive information that Cargill, as a competitor of Tampa Electric in the wholesale power market, could use to the detriment of Tampa Electric’s ratepayers.
11. While acknowledging in Paragraph 24 of its Motion that Cargill does, in fact, compete with Tampa Electric in the wholesale market, Cargill suggests that ratepayers can be protected if the information at issue is provided pursuant to a properly crafted non-disclosure agreement.
12. Tampa Electric is willing to provide the information in question pursuant to a non-disclosure agreement that ensures that the information provided will not be disclosed to specifically identified Cargill employees and affiliates engaged in the wholesale market function, including those known by Tampa Electric to be so engaged.
13. In Interrogatory No. 18, Cargill has asked Tampa Electric to:

*Calculate the cost/benefit ratio of the Cargill self-service wheeling program using the Total Resource Test required in order No. 24745. Explain in detail each of your inputs and calculations.*

14. Tampa Electric objects to Interrogatory No. 18 on the ground that the Company has not performed the requested analysis and has no obligation to do so since it is not the moving party in this proceeding. Tampa Electric has provided the quarterly cost/benefit analyses associated with the two-year Cargill self-service wheeling experiment authorized by the Commission in Order No. PSC-00-1596-TRF-EQ. A copy of these analyses has already been provided to Cargill. As discussed in Tampa Electric's reports, the data collected indicated that Cargill self-service wheeling has not been cost effective from a ratepayer perspective. Cargill has made no attempt to explain why this analysis is insufficient for the Commission's purposes in this proceeding.
15. As the moving party in this proceeding, Cargill is free to take issue with Tampa Electric's analysis and/or create and sponsor its own cost/benefit analysis as part of its direct testimony in this proceeding. Presumably, Cargill has requested information through the discovery process that will enable it to do such an analysis. Under these circumstances, it is unreasonable and burdensome for Cargill to ask Tampa Electric to perform analysis that Cargill can and should do for itself to meet its burden of proof.
16. Cargill's assertions to the contrary notwithstanding, Section 25-17.008 , Florida Administrative Code, does not require Tampa Electric to perform the Total Resource Test in response to Interrogatory No. 18. This provision states, in relevant part that:



*(2) The purpose of this rule is to establish minimum filing requirements for reporting cost effectiveness data for any demand side conservation program proposed by an electric utility pursuant to Rule 25-17.001, F.A.C., and for any self-service wheeling proposal made by a qualifying facility or public utility pursuant to Rule 25-17.0883, F.A.C.(emphasis added).*

17. Clearly the Rule anticipates that the question of filing requirements will be relevant to the party proposing that the Commission adopt a particular self-service wheeling proposal. As the qualifying facility proposing self-service wheeling in this proceeding, any obligation to provide a cost effectiveness analysis or otherwise meet the minimum filing requirements falls to Cargill.

18. Interrogatory No. 20 asks:

*How much has TECo charged industrial customers to promote industrial cogeneration since 1980?*

19. Tampa Electric objects to Interrogatory No. 20 on the ground that the requested information is not relevant to the matters raised in this proceeding. The explanation offered at Paragraph 30 of Cargill's motion does nothing to establish the required linkage. The cost of Tampa Electric's conservation programs has nothing to do with the cost-effectiveness of Cargill self-service wheeling and Cargill has offered no coherent linkage.

20. Interrogatory No. 22 asks:

*What is the sum TECo calculates customers have derived from the conservation surcharge it imposes on customers to enable it to promote industrial cogeneration?*

21. Tampa Electric objects to Interrogatory No.22 on the ground that the interrogatory is vague, ambiguous and otherwise unintelligible. Once again, Cargill's attempt, in Paragraph 32 of its Motion, to clarify Interrogatory No. 22 does not cure the

defect in the interrogatory as propounded. Even with Cargill's attempted clarification, the question remains ambiguous and unclear.

### **Production Requests**

22. In Production Request No. 1 Cargill seeks:

*All worksheets, spreadsheets, backup materials and calculations supporting the figures included in the schedule entitled "Impact of Cargill Self-Service Wheeling (SSW) Pilot" contained in each of the seven (7) Quarterly Reports provided to the Commission.*

23. Tampa Electric objects to Document request No. 1, to the extent that such request would require the disclosure of hourly marginal fuel cost data, on the ground that the requested hourly marginal fuel cost information is proprietary, commercially sensitive information that Cargill, as a competitor of Tampa Electric in the wholesale power market, could use to the detriment of Tampa Electric's ratepayers. However, Tampa Electric would be willing to provide this information pursuant to a non-disclosure agreement containing the same disclosure restrictions as described in Paragraph 12 above.

24. Production Request No. 3 asks for:

*All documents related to the calculation of the Total Resource Test for the self-service wheeling program.*

25. Tampa Electric objects to Production Request No. 3 on the grounds that the Company has not performed the requested analysis and has no obligation to do so since it is not the moving party in this proceeding. As discussed in Paragraphs 14 – 17 above, Tampa Electric has already provided its cost/benefit analysis for Cargill self-service wheeling. Cargill, as the proponent of self-service wheeling in

this proceeding, is free to take issue with Tampa Electric's cost/benefit analysis and/or create and sponsor its own cost/benefit analysis.

### **III.** **Conclusion**

26. Tampa Electric stands ready to participate in focused mediation that targets the issues left unresolved by the many months of intensive settlement discussions that have taken place. The Company is also willing to explore in mediation the proposed alternative to self-service wheeling that Cargill has been unwilling, thus far, to discuss on an informal basis. However, Tampa Electric objects to Cargill's request to reinstate the procedural and compel responses to discovery if mediation is to be pursued.
27. If the procedural schedule is reinstated, Tampa Electric does not object to Cargill's request that its direct testimony in this proceeding be filed 15 days after Tampa Electric has provided its responses to the discovery previously propounded by Cargill in this proceeding.
28. Finally, the issues raised by Cargill's Motion to Compel are relatively straightforward and do not appear to warrant setting time for oral argument. However, should the Commission grant Cargill's request for oral argument, then Tampa Electric respectfully reserves the right to participate in such presentation.

WHEREFORE, Tampa Electric respectfully requests that:

1. Cargill's request for mediation be granted only to the extent provided in Paragraph 4 above;

2. Cargill's request to reinstate the procedural schedule be granted only if its request for mediation is denied;
3. Cargill's request for oral argument in connection with its Motion to Compel be denied but that Tampa Electric be allowed to participate if this request is granted; and that
4. Cargill's motion to compel be denied, except as provided above.

DATED this 6th day of June 2003.

Respectfully submitted,

HARRY W. LONG, JR.  
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And

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By: 

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

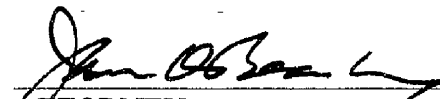
I HEREBY CERTIFY that a true copy of the foregoing Motion, filed on behalf of Tampa Electric Company, has been served by hand delivery (\*) or U. S. Mail on this 6th day of June, 2003 to the following:

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ATTORNEY