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August 5, 2003

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 020898-EQ

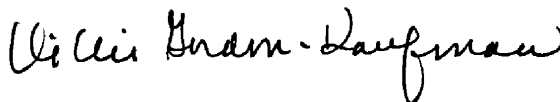
Dear Ms. Bayo:

On behalf of Cargill Fertilizer, Inc. enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Cargill Fertilizer, Inc.'s Response to Tampa Electric Company's Motion for Clarification.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copy to me. Thank you for your assistance.

Sincerely,



Vicki Gordon Kaufman

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COMMISSION
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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 area.

Docket No. 020898-EQ

Filed: August 5, 2003

**CARGILL FERTILIZER, INC.'S RESPONSE
TO TAMPA ELECTRIC COMPANY'S MOTION FOR CLARIFICATION**

Pursuant to rule 28-106.204, Florida Administrative Code, Cargill Fertilizer, Inc. (Cargill) responds to Tampa Electric Company's (TECo) Motion for Clarification of Order No. PSC-03-0866-PCO-EQ. TECo's Motion should be denied.

1. On July 24, 2003, the Prehearing Officer entered Order No. PSC-03-0866-PCO-EQ (Order). This Order granted in full Cargill's motion to compel TECo to respond to discovery and set out the procedural schedule for the docket. The Order lists the following testimony due dates:

Cargill's direct testimony and exhibits	August 27, 2003
TECO's direct testimony and exhibits/ staff's direct testimony and exhibits, if any	September 10, 2003
Rebuttal testimony and exhibits/ Prehearing statements	September 24, 2003

2. TECo asks the Prehearing Officer for clarification that it can respond to Cargill's direct testimony twice, once on September 10th and once again on September 24th. This would be a most unusual procedure, giving TECo "two bites" of the apple, or put another way, *two* opportunities to put on its case. Cargill disagrees that the Order is unclear or justifies a new procedure for dealing with prefiled testimony.

3. The Order provides that Cargill file its direct testimony on August 27th and that TECo (and Staff) file their testimony on September 10th. Cargill may file its rebuttal to TECo (and Staff, if necessary) on September 24th. To the extent necessary, TECo may file any rebuttal it may have to Staff testimony on September 24th. The "clarification" TECo seeks is violative of Cargill's due process rights and should be rejected.

DOCUMENT NUMBER - DATE

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FPCO-0301050K J. CLERK

4. To bolster its "clarification" argument, TECo contends that if the Prehearing Officer intended to require it to file its testimony on September 10th, it will be unable to do so because it has not have sufficient time to propound discovery and prepare its testimony. However, this case has been pending for a year.¹ TECo has had ample opportunity to propound discovery and will continue to have that opportunity.² Further, as discussed below, it is TECo that has the burden of proof in this case and it is TECo that has all the information in its possession to attempt to prove (if that is its contention) that Cargill's self-service wheeling (SSW) program will adversely affect other ratepayers.

5. Cargill agrees with TECo that the party with the burden of proof should have discovery in hand that is necessary to conduct the tests contained in the Commission Cost-Effectiveness Manual before it files its testimony. Thus, it is ironic that TECo has objected to providing information exclusively in its possession that Cargill needs to conduct the required studies, but contemporaneously argues that Cargill has the burden of proving its entitlement to SSW. TECo apparently plans to prevail in this cause by setting up a catch-22 dilemma: Cargill must prove its entitlement to SSW, but can't have the evidence to do it.

6. As the Prehearing Officer is aware, Cargill served its First Set of Discovery on TECo in October 2002. TECo answered none of the questions and objected to many of them. It has required the entry of a Commission Order to induce TECo to respond. At this point, Cargill has not yet received TECo's responses and so does not know if they will be complete. Cargill served its Second Set of discovery on July 25, 2003, and given the rapidly approaching due date for its direct testimony, requested that TECo respond to such discovery in 15 days³; TECo objected.⁴ Further, in response to Interrogatory Nos. 24(a)-(c), which seek information which is required to perform the

1 Cargill's Petition was filed on August 16, 2002.

2 Cargill initially propounded discovery in this case in October 2002. Though discovery was stayed due to a procedural abeyance while the parties attempted to negotiate a settlement, discovery could have been propounded both before and after that date. And in fact, Cargill served a second round of discovery on July 25, 2003. TECo has had the same opportunity but waited until August 1, 2003 to send any discovery. Further, normal discovery, such as depositions, are and will continue to be available to TECo.

3 Cargill Motion to Shorten Discovery Response Time, filed July 15, 2003.

4 Response of Tampa Electric to the Motion of Cargill Fertilizer, Inc. to Shorten Discovery Response Time, filed July 29, 2003.

Manual's Cost-Effectiveness test, TECo objected on the basis that it does not have the information requested.⁵ Thus, TECo alleges it does not have the information needed to perform the tests, but nonetheless contends that Cargill must do so.

7. Cargill suggests that to avoid the conundrum which would result from TECo's view of the case, the Prehearing Officer should clearly delineate the burden of proof in this docket as resting with TECo. The statute and implementing regulations, as well as the Order in this docket, demonstrate that this is the correct posture of the case. Section 366.051, Florida Statutes, requires electric utilities to grant SSW to retail customers that request it⁶ unless the Commission finds that SSW will adversely affect the general body of wholesale and retail customers. Upon filing a SSW request (as Cargill has done here), a prima facie entitlement to the service is created, without the need for a tariff filing, unless the utility comes forward with evidence establishing a material adverse impact on the general body of customers. In this event, the utility shall file a SSW tariff designed to protect the general body of customers. The Order recognizes that the utility has the burden of proof by noting that the Commission rules implementing SSW require the "public utility to provide the evaluation of the cost effectiveness of the program, regardless of the fact that the proposal to make the program permanent was made by Cargill."⁷ The Order requires TECo, not Cargill, to perform the Total Resource Test.

8. The statute and the Commission's implementing rules make perfect sense in this regard. The utility is the only party with the essential information relating to its operating factors, generation planning, anticipated future average fuel costs, current and anticipated marginal fuel costs, current and anticipated relevant purchased power costs and other information that is needed to ascertain the impact on the general body of customers

9. Though TECo claims it must have completed discovery before it can file its testimony, all the relevant information is already in its possession. None of the questions that TECo has

⁵ TECo's Objections to Cargill's Second Set of Interrogatories, filed July 31, 2003.

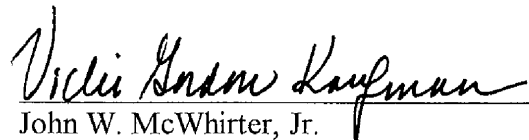
⁶ The statute provides that the utility "shall" provide the service.

⁷ Order at 6

propounded to Cargill relate to inputs to the cost-effectiveness test or to harm that would allegedly occur if Cargill's SSW program were made permanent.

10. If the Prehearing Officer determines that Cargill has the burden of proof in this case, Cargill should have at least 15 days after TECo responds completely to all outstanding discovery before it is required to file its testimony. If the Prehearing Officer determines that TECo has the burden to prove that SSW adversely impacts the general body of customers, TECo has all the required information and should be required to abide by the schedule as previously set out.

WHEREFORE, TECo's Motion for Clarification should be denied. The Prehearing Officer should rule that TECo has the burden of proving adverse impact on the general body of ratepayers, if it takes this position. If the Prehearing Officer rules otherwise as to the burden of proof, Cargill should not be required to file its testimony until 15 days after it has received complete discovery responses from TECo as to all its outstanding discovery with respect to information required by the Commission Cost-Effectiveness Manual.



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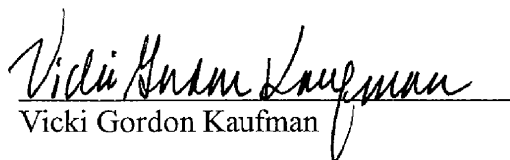
CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing Cargill Fertilizer, Inc.'s Response to Tampa Electric Company's Motion for Clarification has been furnished by (*) hand delivery or U.S. Mail on this 5th day of August 2003 to the following:

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