

ORIGINAL  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Tampa Electric  
Company for a Declaratory Statement  
Regarding Proposed Transfer of  
Service.

DOCKET NO. <sup>890646-EE</sup> 880415-EE  
Filed:

AGRICO CHEMICAL COMPANY'S ANSWER TO TAMPA ELECTRIC COMPANY'S  
COMPLAINT FOR RESOLUTION OF TERRITORIAL DISPUTE

Agrico Chemical Company, a division of Freeport-McMoRan Resource Partners Limited Partnership ("Agrico"), through its undersigned attorney files this Answer to Tampa Electric Company's ("TECO") Complaint and says:

1. Agrico admits the allegations in paragraph 2 of the TECO Complaint.
2. Agrico denies the allegations in paragraph 3 of the TECO Complaint.

Background

3. Agrico admits the factual assertions in paragraphs 4, 5 and 6 of the TECO Complaint.

ACK 4 4. As to paragraph 7, Agrico presently receives power from Florida Power  
 AFA \_\_\_\_\_ Corporation at a substation 2.2 miles south of the utilities' arbitrary territorial dividing  
 APP 1 line. The present electrical demand by Agrico at this substation is 18 megawatts with an  
 CAF \_\_\_\_\_ anticipated present annual consumption in excess of 70,000,000 kilowatt hours and  
 CMU \_\_\_\_\_ anticipated future annual consumption of over 200,000,000 kilowatt hours to serve mining  
 CTR \_\_\_\_\_ activities in Hardee County, Florida, south of TECO's arbitrary dividing line.  
 EAG 1  
 LEG \_\_\_\_\_

LIN 6  
OPC 1 5. TECO's paragraph 8 is admitted.

RCH \_\_\_\_\_  
SEC 1  
WAS \_\_\_\_\_ FIP/5335M0102A/890526

DOCUMENT NUMBER-DATE  
05355 MAY 30 1989  
FPSC-RECORDS/REPORTING

6. With respect to paragraph 9 in TECO's Complaint, Agrico admits it presently operates five production draglines and that on October 24, 1988, it informed TECO of its request to Florida Power Corporation (FPC) to provide service to two of Agrico's draglines now served by TECO. Agrico is without knowledge of the remaining allegations in the paragraph and demands strict proof thereof. Agrico has been operating draglines in Hardee County (south of TECO's arbitrary dividing line with FPC) for nine years, has mined more than 2,240 acres of land and has paid TECO more than \$9,000,000 for energy consumed by Agrico outside of TECO's alleged territorial boundary.

7. TECO and FPC divided service territories along the Polk-Hardee County Line 29 years ago when neither company had active customers in the vicinity of the Agrico property. Agrico is not a party to the agreement by which the power companies divided up Agrico's property. The Fort Green mine property includes 55 square miles of contiguous land. Of this, 26 square miles are located within the arbitrarily designated TECO service area, 25 square miles are within the arbitrarily designated FPC service area, and 4 square miles are within the arbitrarily designated FP&L service area. Agrico has been operating at Fort Green since 1975 and as of March 1 has mined all but 19 percent (2,990 acres) of the land remaining within the TECO service area. As of this date Agrico has also mined 2,240 acres within FPC's service area, and in the near future all of the mining acres will be located in FPC's or FP&L's area. In addition, Agrico anticipates the installation of a processing plant within FPC's service area and a reduction in the size of the present processing plant within the TECO service area.

8. The Fort Green mine commenced operations in Polk County. Agrico constructed the Fort Green Mine Phosphate Processing Plant 1.5 miles north of the Hardee County Line in the area the FPC/TECO territorial agreement assigned to TECO in 1975. As the mining operation progressed it has followed the phosphate reserves into

Hardee County and will continue moving southward to follow phosphate reserves into the foreseeable future. As alleged in paragraph 8 of TECO's Complaint, electrical power is required to operate the mine draglines, to power the pumps associated with the pipeline transporting slurry mixture containing phosphate ore from the dragline mining location to the processing plant. Electrical power is also required for the processing plant. TECO's Complaint would require Agrico to seek electrical service for its dragline operation and part of the slurry pipeline pumps from FPC and the electrical energy for the remainder of the slurry pipeline pumps and the processing plant from TECO, requiring the two utilities to duplicate transmission lines. Agrico plans only one transmission line, from FPC, to serve all of Agrico's internal distribution system.

9. Agrico is an interruptible consumer of electricity. An interruption either at the mine located in the area assigned to FPC or the processing plant located in the area assigned to TECO would cause the shutdown of Agrico's Mining operation. Dividing Agrico's mining operation places it in double jeopardy of interruption. For example, in September of 1988, TECO interrupted service to Agrico 18 times for a total of 90 hours. During the same period, there were no interruptions by FPC in the area assigned to FPC. Fortunately, TECO was able to buy emergency power from other sources for most of these interruptions, but Agrico always must assume the risk that emergency power will not be available. Dividing Agrico's mining operation places it in double risk of normal weather-related outages in addition to the interruptible obligations from two utilities. The loss of power to either part of a pipeline served by two power companies would likely cause extensive damage to the pumps and pipelines due to severe cavitation and water hammer.

10. Agrico admits the allegations in paragraph 10 of the TECO Complaint. The FPC service commenced on March 1, 1989. In regard to paragraph 10 of the TECO

Complaint, FPC constructed a 1-1/2-mile-long 69 kilovolt transmission line to Agrico's property located within the FPC service area. This line terminates at FPC's meter. From there Agrico carries the power through its own substation and distributes it through the mining operations in Hardee County. This service commenced on March 1, 1989.

11. Agrico admits the first two sentences of paragraph 11 of TECO's Complaint, and admits that TECO made the statements it said it made in the remainder of the paragraph. Agrico denies TECO's allegations concerning service obligations to its interruptible customers. The standard interruptible contract between Agrico and TECO and the tariff governing the service requires five years notice before TECO is obligated to provide reliable firm service.

12. The first two sentences of Paragraph 12 are denied.

13. TECO's exhibit A is not drawn to scale and fails to show Agrico's slurry pipelines. The exhibit does demonstrate the absurdity of TECO's request which apparently seeks to require Agrico's dragline to change power companies each time it crosses the Polk County line.

#### 1960 Territorial Agreement

14 With respect to Paragraph 14 and 15, the agreements speak for themselves. Agrico points out that under the terms of the agreement the power companies can and, Agrico alleges, have consented to operations outside of the territorial boundaries described by the agreement without Commission approval. The agreement was executed 29 years ago when neither utility had significant active service along the territorial boundary and the state had no clearly articulated and affirmatively expressed policy to displace competition between electric utilities. The dividing line is arbitrary and

capricious. It is not actively supervised by the Florida Public Service Commission (FPSC), but by its terms permits the power companies to change their service boundaries at will by mutual consent. TECO's open and notorious violation of the agreement over many years should estop it from enforcing the agreement. The agreement seriously impinges upon Agrico's utilization of its facilities, causes it to pay unreasonably high electric rates and unjustly deprives Agrico of the use of its property without due process of law.

### Statutory Requirements

15. In response to paragraph 16 of TECO's Complaint, Agrico denies that after it purchases electricity the end use of the the electricity on its own property is inconsistent with any statutory law or regulatory policy. Agrico denies that its purchase of power from FPC causes an economic duplication of generation, transmission and distribution facilities. The interpretation and enforcement of the territorial agreement in the manner sought by TECO will cause duplication of transmission facilities. Enforcement of the agreement will have no impact on distribution facilities and may adversely affect TECO's stated, long range conservation goals with respect to generating facilities.

16. Paragraphs 17 and 18 of TECO's Complaint are admitted. TECO's paragraphs 19, 20 and 21 are denied. Agrico is without knowledge of the allegations in paragraph 22 and demands strict proof thereof.

17. In response to page 23 in TECO's Complaint, Agrico denies that the dicta in the Lee County Coop case <sup>(1)</sup> is applicable to this case. There are major distinguishing characteristics. Lee County Coop is an REA Coop not an investor owned utility. Agrico

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(1) Lee County Electric Cooperative v. Marks, 501 So.2d 585, 587 (Fla. 1997).

is a substantial customer of FPC with an anticipated consumption of over 200,000,000 per kilowatt hours of electricity per annum for operations in Hardee County. These operations in Hardee County, Florida (FPC's arbitrary service area) and the processing operating in Polk County, Florida (TECO's arbitrary service area) are integral parts of a single phosphate mining operation. Agrico receives service from FPC 2.2 miles south of the dividing line between the utilities and proposes to utilize that service in the 26 square miles it plans to mine in Hardee County. It would be unjust and unreasonable, as well as uneconomical, to require Agrico to move its Fort Green mine processing plant in order to maintain integrated electric service.

18. Agrico acknowledges the accuracy of the quotes in TECO's paragraph 24, but denies that the FPC/TECO territorial agreement was supported by competent substantial evidence, that it has been policed in any meaningful fashion, and that Agrico, whose substantial property rights are affected, had any opportunity to exercise its due process rights. Circumstances have dramatically changed since the 1960 agreement was executed. These changes place Agrico at a substantial competitive disadvantage vis a vis other similar phosphate mining operations. Enforcement of the territorial agreement by the FPSC in the arbitrary manner sought by TECO would deny Agrico equal protection of the law.

§366.03 Fla. Stats.

19. Agrico disagrees with TECO's interpretation of §366.03 Fla. Stats. in paragraph 25 of its Complaint and alleges that enforcement of the arbitrary FPC/TECO territorial agreement will result in undue and unreasonable prejudice to it as a customer required to compete with mining companies in a comparable class who receive electric power at substantially lower rates.

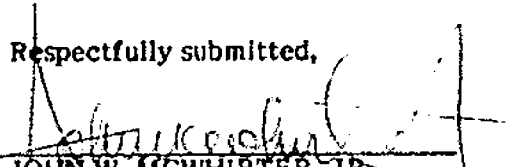
20. In response to TECO's paragraph 27, Agrico denies that Chapter 366 Fla. Stats. sets out a comprehensive regulatory scheme for dividing service areas between electric power companies and further denies that the Commission has undertaken a comprehensive regulatory plan for such division. The territorial agreement in dispute was approved summarily without competent substantial supporting evidence and has been openly disregarded by its parties and devoid of active supervision by the State.

21. Paragraphs 29 and 30 of TECO's Complaint are denied.

WHEREFORE, Agrico Chemical Company respectfully requests the Commission to enter an order denying Tampa Electric Company's Complaint and thereby allow Agrico to utilize the commodity <sup>(2)</sup> it purchases on its own property in the fashion it determines to be in its own best interest without interference from disputing power companies or state regulatory commissions authorized to oversee the operations of power companies.

DATED this 26th day of May, 1989.

Respectfully submitted,



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(2) electric power

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response has been served by U.S. mail on Lee L. Willis and James D. Beasley, Ausley, McMullen, McGehee, Carothers and Proctor, Post Office Box 391, Tallahassee, Florida 32301, attorneys for Tampa Electric Company, and Mr. Russell D. Chapman, Manager, Regulatory Coordination, Tampa Electric Company, Post Office Box 111, Tampa, Florida 33601, Albert M. Stephens, Office of the General Counsel, Florida Power Corporation, Post Office Box 14042, St. Petersburg, Florida 33733, Cynthia S. Tunnicliff, Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.A., Post Office Drawer 190, Tallahassee, Florida 32302, and Sylvia H. Walbolt, Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.A., Post Office Box 3239, Tampa, Florida 33601, this 26th day of May, 1989.

  
John W. McWhirter, Jr.