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February 11, 2000

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Petition for determination of need for an electrical power plant in Okeechobee County by the Okeechobee Generating Company, L.L.C.;
FPSC Docket No. 991462-EU

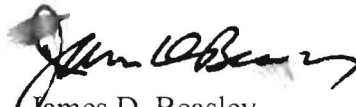
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response in Opposition to Okeechobee Generating Company's Motion to Compel Tampa Electric Company to Respond to Discovery Requests.

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.

Sincerely,


James D. Beasley


JDB/pp

Enclosures

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

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for determination of need)
for an electrical power plant in Okeechobee)
County by the Okeechobee Generating)
Company, L.L.C.)
_____)

DOCKET NO. 991462-EU
FILED: February 11, 2000

**TAMPA ELECTRIC COMPANY'S RESPONSE IN OPPOSITION TO
OKEECHOBEE GENERATING COMPANY'S MOTION TO COMPEL
TAMPA ELECTRIC COMPANY TO RESPOND TO DISCOVERY REQUESTS**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the Motion to Compel Tampa Electric Company to Respond to Discovery Requests filed on behalf of Okeechobee Generating Company ("OGC") on February 4, 2000:

1. The purpose behind OGC's motion to compel is covered by the thinnest of veils.

At page 3 of its motion, OGC suggests:

If TECO does not want to comply with the obligations of a party, it should withdraw its Petition for leave to intervene (TECO's Petition to Intervene). OGC will not object to such withdrawal.

2. OGC's message to Tampa Electric is clear: get out of the case or we will attempt to punish you through the use of vague, irrelevant, overly broad and clearly burdensome discovery requests. The Commission should not allow the discovery process to be used to silence parties who have a legitimate interest in the outcome of this proceeding.

3. OGC's assertion that Tampa Electric has a burden of proof in this proceeding is clearly incorrect. Tampa Electric is neither the applicant nor moving party in this proceeding. Tampa Electric is not a respondent in this docket. We were not joined as an indispensable party

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to this proceeding. We have made no request to the Commission for affirmative relief nor have we made any discovery requests of OGC. Tampa Electric advised counsel for OGC over two months ago that it did not intend to sponsor a witness in this proceeding. Instead, it is our intention to participate through cross-examination, when necessary, and post-hearing briefing. Under these circumstances, it is difficult, if not impossible, to understand what burden of proof Tampa Electric has in this proceeding.

4. Tampa Electric petitioned for leave to intervene in this proceeding on October 20, 1999 soon after OGC's petition was filed on September 24, 1999. OGC did not exercise its right to file a timely objection to Tampa Electric's petition to intervene, although OGC did file a motion to strike portions of another intervenor's petition.

5. On November 4, 1999 the Commission through its prehearing officer, Commissioner Jacobs, entered an order granting Tampa Electric and other parties intervenor status in this proceeding, noting that OGC did not file responsive pleadings to the intervention petitions of the Legal Environmental Assistance Foundation, Tampa Electric or Florida Power Corporation. In the notice of further proceedings or judicial review section of this order, OGC was advised of its opportunity to request reconsideration within 10 days. No such relief was sought by OGC.

6. On November 5, 1999 OGC propounded to Tampa Electric extensive First Interrogatories, First Request for Production of Documents and First Request for Admissions calling for what amounts to an exhaustive search for and presentation of information. Tampa Electric timely filed objections to OGC's burdensome discovery requests on November 15, 1999 and the company stands by the substance of those objection.

7. Not until February 4, 2000, two and one half months after Tampa Electric's objections to discovery had been filed, did OGC suddenly determine it necessary to challenge Tampa Electric's Commission approved standing as an intervenor through OGC's lengthy Motion to Compel. Such motion is a belated attempt to seek reconsideration of the Commission's order approving Tampa Electric's intervenor status in this proceeding.

8. If the voluminous information sought by OGC were so important to their case, why then would they have delayed to the eleventh hour and why, then, would they be so willing to dispense with the information if only Tampa Electric would drop out of the case?" The answer is obvious: the information sought is irrelevant.

9. As the Commission has determined, Tampa Electric's petition for Leave to Intervene satisfied the requirements of Rule 28-106.205 in that Tampa Electric alleged that its substantial interests are subject to determination or will be affected through the proceeding. In the Florida Audubon Society v. Department of Environmental Regulation case cited by OGC in its motion to compel, the agency's Hearing Officer reviewing the matter on appeal concluded that intervenors had only to meet the specified statutory requirements to establish standing and that the hearing officer's attempt below to impose additional requirements for the intervenors to demonstrate standing had to be rejected. In this proceeding, Tampa Electric has complied fully with the requirements of Rule 28-106.205. On its face, this Rule does not require Tampa Electric to prove anything at the hearings in this proceeding. The order granting Tampa Electric's Petition to Intervene was not conditioned on Tampa Electric "proving" anything at the hearings in this proceeding. OGC's argument is nothing more than attempts to read into the Rule requirements that do not exist.

10. OGC's burden of proof argument is a red herring. Tampa Electric has alleged facts sufficient to meet the requirements for intervention. Moreover, this is a case regarding OGC's alleged need for new generating capacity - not Tampa Electric's need for power - and follows that OGC's burdensome discovery requests really seek information that is irrelevant to the burden OGC has assumed in filing its petition in this matter. The case law cited by OGC undercuts rather than supports their contentions, if one digs deeper than the case headnotes.

11. OGC places great reliance on the court's decision in Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathé Communications Co., 629 So. 2d 852 (Fla. 1st DCA 1994) for its assertion that Tampa Electric's Petition to Intervene provides a reasonable basis for discovery in this proceeding. This reliance is misplaced. The Court in the Krypton Broadcasting case was confronted with a breach of contract suit where the Defendant, the party allegedly in breach, had filed an answer, affirmative defenses and various counterclaims, thereby creating new issues. Since the Defendant had become the proponent of issues directly relevant to the breach of contract in question, reasonable discovery with regard to these new issues was deemed to be appropriate as a general matter. Nevertheless, the Court upheld the Defendant's objections to discovery on the grounds that the discovery requests were nothing more than a "fishing expedition" designed "to harass the defendant." Therefore, the Court ruled that lower court order requiring the defendant to respond to the discovery requests was a substantial departure from the essential requirements of law.

12. Unlike the defendant in the Krypton Broadcasting case, Tampa Electric has not declared itself to be the proponent of any particular issue in this proceeding and the details of Tampa Electric's operations are, at best, only remotely tangential to the real issues in this proceeding: Does OGC have standing as an applicant in this proceeding and has OGC

demonstrated a need for electric power that is cognizable under the Florida Power Plant Siting Act? In light of the fact that OGC is a non-utility generator with no obligation to serve the public, its time would be better spent worrying about its own standing to be an applicant in this proceeding. (see Nassau Power Corporation v. Deason, 641 So. 2d 396 (Fla. 1994)).

13. It is also informative to compare the language of OGC's discovery requests to Tampa Electric in this proceeding with the discovery requests that the Krypton Broadcasting court found to be calculated to harass. Both sets of requests use the same open-ended language and ask for details of events and matters that have no reasonable relationship to the case at hand. The other cases relied upon by OGC to buttress its assertion that Tampa Electric has a burden of proof in this proceeding are equally inapposite.

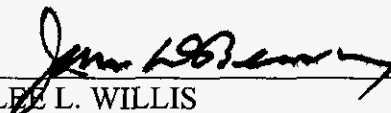
14. It is apparent that the main purpose of OGC's motion to compel is to leverage silence on the part of Tampa Electric by use of clearly burdensome and unmanageable discovery. Tampa Electric does not believe that OGC's discovery requests of Tampa Electric are relevant to the subject matter of this proceeding, nor that Tampa Electric should be required to devote the tremendous amount of time it would take to respond. However, if that is Tampa Electric's only choice, it will have to reserve its right to withdraw its petition for leave to intervene – an act to which OGC indicates it will not object.

WHEREFORE, Tampa Electric submits the foregoing in opposition to OGC's Motion to Compel Tampa Electric to respond to discovery requests and urges the Commission to find and determine that such discovery requests are irrelevant to the disposition of this proceeding, overly burdensome and otherwise inappropriate.

DATED this 11th day of February, 2000.

Respectfully submitted,

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true copy of the foregoing Response in Opposition, filed on behalf of Tampa Electric Company, has been furnished by U S. Mail or hand delivery (*) on this 11th day of February, 2000 to the following:

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