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October 22, 2001

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: Petition of City of Bartow, Florida, Regarding a Territorial Dispute with Tampa Electric Company, Polk County, Florida; FPSC Docket No. 011333-EI

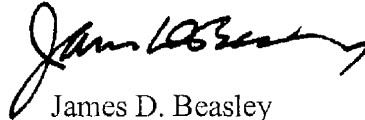
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Dismiss.

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
Enclosure

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

DOCUMENT NUMBER 011333-EI
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of City of Bartow, Florida,)
Regarding a Territorial Dispute with Tampa)
Electric Company, Polk County, Florida.)
_____)

DOCKET NO. 011333-EI
FILED: October 22, 2001

TAMPA ELECTRIC COMPANY'S MOTION TO DISMISS

Pursuant to Rule 28-106.204, F.A.C, Tampa Electric Company ("Tampa Electric" or the "Company") hereby respectfully requests that the Petition of the City of Bartow ("City") to Modify Territorial Agreement or, in the Alternative, to Resolve Territorial Dispute in Polk County, Florida ("Petition"), filed with the Commission on October 4, 2001, be dismissed for failure to state a cause of action for which relief can be granted. Specifically, the facts alleged in the Petition do not identify a service territory dispute within the meaning of Rule 25-6.0439, F.A.C. Furthermore, the City has failed to allege in the Petition any relevant facts demonstrating changed conditions or changed circumstances that would make modification of the Commission's order adopting the existing service territory boundaries necessary in the public interest. In support of its Motion, the Company says:

1. On April 16, 1985, Tampa Electric and the City entered into an agreement ("Agreement") for the purpose of creating and establishing boundary lines between their respective electric service areas in Polk County, Florida, subject to the prior approval of this Commission. The express purpose and intent of the Agreement was to "avoid uneconomic waste, potential safety hazards and other adverse effects that would result from duplication of electric facilities in the same area." Tampa Electric and the City

expressly agreed “that neither party ...[would] provide or offer to provide electric service at retail rates to future customers within the territory reserved to the other party.” (emphasis added)

2. On April 30, 1985, the Company and the City jointly filed a petition with this Commission in Docket No. 850148-EU asking this Commission to approve the Agreement. On December 11, 1985, the Commission issued Order No. 15437 (“Order”) incorporating by reference and approving the Agreement. The Commission reviewed the proposed service territory boundaries and concluded that the Agreement was in the best interests of the parties and the public.

3. Rule 25-6.0439(1)(b), Florida Administrative Code, defines a “territorial dispute” as a disagreement as to which utility has the right and the obligation to serve a particular geographical area. No such dispute exists. Pursuant to the Order, Tampa Electric has the exclusive right and obligation to serve the area on its side of the Commission approved territorial boundary line that the City now wishes to serve¹. The City has alleged no facts in the Petition that could lead the Commission to a different conclusion. Therefore, to the extent that the Petition rests on an alleged service territory dispute, it should be dismissed, on a summary basis, for lack of merit.

4. To the extent that the Petition amounts to a request for modification of the Order, this Commission has been very clear with regard to the standard that the City must meet in order to qualify for such relief. In Order No. 23995, issued in Docket No. 900744-EU on January 3, 1991, this Commission addressed a petition filed by the City of Homestead, Florida seeking termination of the existing service territory agreement

¹ See FPSC Order No. 23955, Issued on January 3, 1991 in Docket No. 900744-EU

between Homestead and Florida Power & Light. In dismissing Homestead's petition, the Commission stated:

When a territorial agreement is approved by the Commission, it becomes embodied in the approving order which may only be modified or terminated in accordance with the Commission's express statutory purpose. ... Therefore, in order to withdraw or modify Order No. 4285, Homestead must make a showing that "such modification or withdrawal of approval is necessary in the public interest because of changed conditions or changed circumstances not present in the proceeding which led to the order being modified. . . ." Homestead has failed to allege facts sufficient to support a modification of Commission Order No. 4285 consistent with Peoples Gas and Fuller. Consequently, we grant FPL's motion and dismiss Homestead's petition without prejudice. (91 FPSC 1:25)

5. Tampa Electric respectfully submits that the City has alleged no facts in its Petition that amount to relevant changed circumstances requiring modification of the Order. When boiled down to its essential elements, the City's petition alleges the following "changed circumstances":

- a. On August 7, 2000, the City annexed the entire area comprising the Old Florida Plantation ("OFP") property;
- b. There are current plans for residential development of the OFP property that are expected to result in new electric customers, along with the associated additional revenue; and
- c. The developer of the OFP property has asked the City to provide electric service to the entire development.

6. The City's annexation of the OFP property does not make it necessary in the public interest to modify the Order. Throughout its service territory, Tampa Electric currently serves tens of thousands of customers who reside within incorporated areas. In

every instance, these customers receive various municipal/utility services from their city government and electric service from the Company. The City's assertion that it intends to provide fire, sewer, police and street light service to the future residents of the OFP property does not make it necessary for the City to also provide electric service. The City was content to cede the OFP property to Tampa Electric 15 years ago when there was no immediate prospect of development and associated revenue generation. In the meantime, in reliance on the Order, Tampa Electric has invested in the distribution infrastructure that will permit it to discharge its public utility obligation to serve the OFP property. The Company's distribution facilities surround and, in places, extend into the OFP property. Therefore, the relief requested by the City would only serve to create the unnecessary duplication of facilities that this Commission expressly intended to prevent in the Order.

7. The current plans for residential development of the OFP property do not represent changed circumstances. As noted in paragraph 1 above, the Agreement expressly provided that "that neither party ...[would] provide or offer to provide electric service at retail rates to future customers within the territory reserved to the other party." (emphasis added) The probability that the OFP property would be developed someday, resulting in "future customers" was clearly anticipated by the City and Tampa Electric. Therefore, the fact that the anticipated development of the OFP property is apparently about to materialize cannot now be viewed as a "changed circumstance" requiring that the Order be changed.

8. Finally, the OFP developer's alleged request that the City provide electric service within Tampa Electric's service territory provides no changed condition or changed circumstance not present in the proceeding that gave rise to the Order. Again,

the Agreement, now embodied in the Order, contemplated requests for extraterritorial service by future customers with the parties specifically agreeing not to provide such service.

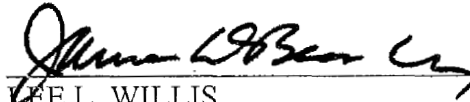
WHEREFORE, Tampa Electric respectfully requests that the Petition be dismissed on the grounds that it fails to allege facts sufficient to establish the existence of a service territory dispute or facts sufficient to support modification of the Order.

DATED this 22nd day of October, 2001.

Respectfully Submitted,

HARRY W. LONG, JR.
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and



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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss, filed on behalf of Tampa Electric Company, has been served by hand delivery (*) or U. S. Mail on this 22nd day of October 2001 to the following:

Ms. Adrienne Vining*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
Gerald L. Gunter Bldg. – Room 370
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Tallahassee, FL 32399-0850

Mr. Davisson F. Dunlap, Jr.
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ATTORNEY