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January 22, 2002

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

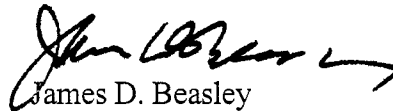
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Compel Responses to Interrogatories and Request for Production of Documents or, in the Alternative, Request for Imposition of Sanctions.

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 - DATE

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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) DOCKET NO. 011333
Electric Company, Polk County, Florida.) FILED: January 22, 2002
_____)

**TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL
RESPONSES TO INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS OR, IN THE ALTERNATIVE,
REQUEST FOR IMPOSITION OF SANCTIONS**

Pursuant to Rule 1.380, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "Company") hereby requests that this Commission issue an order directing the City of Bartow, Florida ("Bartow") to Produce to Tampa Electric those answers and documents that are responsive to Tampa Electric's First Set of Interrogatories (Nos.1-24) ("Interrogatories") and First Request For Production of Documents (Nos. 1-20) ("Document Requests") or, in the alternative, an order dismissing the petition filed by Bartow in this proceeding for willful disregard of the Florida Rules of Civil Procedure and the Uniform Rules of Procedure set forth in the Florida Administrative Code and, in support thereof, says:

1. As discussed in more detail below, Bartow has willfully and without explanation ignored the Florida Rules of Civil Procedure and the Uniform Rules of Procedure by failing to respond to the discovery requests propounded by Tampa Electric in this proceeding. In particular, Bartow has made no response to Tampa Electric's Document Requests to date and belatedly provided incomplete responses to Interrogatories on January 16, 2002. Pursuant to Rules 1.340 and 1.350, Florida Rules of

Civil Procedure, responses or objections to this discovery should have been served by December 21, 2001. Counsel for Bartow has not objected to the discovery propounded by Tampa Electric nor has he made any attempt to contact Tampa Electric to explain his failure to abide by the Rules of Civil Procedure. This willful disregard of the rules is especially perplexing in light of Bartow's strident opposition to Tampa Electric's Motion to Stay Discovery pending resolution of Tampa Electric's Motion to Dismiss.

2. On October 4, 2001 Bartow filed with this Commission a "Petition to Modify Territorial Agreement or, in the Alternative to Resolve Territorial Dispute With Tampa Electric Company, in Polk County, Florida" (the "Petition").

3. On October 22, 2001, Tampa Electric filed a Motion to Dismiss the Petition on the grounds that no current territory dispute existed in light of the Commission's unambiguous 1985 order¹ giving Tampa Electric the exclusive right and obligation to serve the territory at issue and that Bartow had alleged no changed circumstances that would justify modification of the Commission's earlier service territory ruling.

4. On November 8, 2001, Bartow served, by mail, its First Set of Interrogatories to Tampa Electric. Pursuant to Rule 1.340, Florida Rules of Civil Procedure, responses from Tampa Electric were due on December 13, 2001², absent timely objection from Tampa Electric.

5. On November 21, 2001, Tampa Electric served, by hand delivery, its Interrogatories and Document Requests to Bartow. Pursuant to Rules 1.340 and 1.350,

¹ See Order No. 15437, issued on December 11, 1985.

² Responses due 30 days after November 8th, plus 5 days since the discovery was served by mail.

Florida Rules of Civil Procedure, responses from Bartow were due on December 21, 2001, absent timely objection.

6. On November 26, 2001, Tampa Electric filed a Motion to Stay Discovery pending Commission consideration of the October 22nd Motion to Dismiss. Tampa Electric's only motive in seeking to hold discovery in abeyance was to avoid the expenditure of valuable Commission time and resources on discovery matters that would be rendered moot should the Motion to Dismiss be granted.

7. In its December 4, 2001 response opposing Tampa Electric's request to hold discovery in abeyance, Bartow declared:

"A stay should not be granted in this instance. Not only has TECO failed to articulate a basis for such a stay, but Bartow would be unduly prejudiced by such a stay. Bartow desires the expeditious resolution of this matter by the Commission. TECO's request for a delay of the proceeding is self-serving, TECO's requested stay serves only to prevent Bartow from the expeditious preparation of the case."

8. On December 13, 2001, as required under the Rules of Civil Procedure, Tampa Electric served its complete set of answers to Bartow's First Set of Interrogatories.

9. On January 4, 2002, counsel for Tampa Electric called counsel for Bartow to find out why no response to Tampa Electric's discovery request had been served on December 21, 2001, as required. Counsel for Bartow indicated that December had been a busy month for his client and that responses would be provided shortly. On January 11, 2002, Bartow faxed an incomplete draft of responses to Tampa Electric's Interrogatories and represented that a final version of Bartow's responses would be served the following week. On January 15, 2002, Bartow served an incomplete set of responses to Tampa

Electric's Interrogatories and made no mention of a response to Tampa Electric's outstanding document requests.

10. Tampa Electric requests that Bartow be ordered to respond immediately to Tampa Electric's Document Requests. As noted above, to date Tampa Electric has received no documents in response to its request. Counsel for Bartow has raised no objections to the Document Requests nor has he made any attempt to address or explain Bartow's failure to respond. Tampa Electric understands that the discovery process can be time consuming and often diverts valuable resources away from other important matters. However, having objected to suspending discovery pending Commission resolution of Tampa Electric's Motion to Dismiss and having pressed the Commission for expeditious resolution of its Petition, Bartow's failure to make any apparent attempt to respond to Tampa Electric's Document Requests should not be tolerated by the Commission. Bartow should be ordered to respond immediately or face dismissal of its Petition.

INCOMPLETE OR NON-RESPONSIVE INTERROGATORY ANSWERS

11. Tampa Electric requests that Bartow be ordered to respond to Interrogatory No. 8 which reads as follows:

With regard to each contact identified in response to Interrogatory Nos. 1 through 8 above, please provide the following information:

- a. The date, time and location and stated purpose of the contact,
- b. The identity of the representatives of the City and the OFP property owner and/or developer involved in the contact,
- c. A complete description of the substance of the contact,

- d. Identification of any documents used, referred to, created in the course of or memorializing the contact or any documents comprising the contact.

12. Bartow's answer to Interrogatory No. 8 is as follows:

"There are no current records which identify several informal meetings or discussions where electricity service to OFP was discussed. A continuing search of files may produce more specific information regarding dates of meetings."

Bartow made no attempt to answer subparts (a) through (c) of Interrogatory No. 8. Its apparent attempt to address Interrogatory No. 8(d) is incomplete and evasive and, pursuant to Rule 1.380(a)(3), Florida Rules of Civil Procedure, must be treated as a failure to respond. Absent a timely objection or request for additional time, there can be no reasonable justification for Bartow's failure to respond.

13. Tampa Electric requests that Bartow be ordered to respond to Interrogatory No. 10(d) which reads as follows:

"Please identify each existing substation that the City intends to use to provide electric service to the OFP property and provide the following information with regard to each such facility:

- d. The total capacity, current load and peak load of each transmission line serving each substation."

14. Bartow's response to Interrogatory No. 10(d) was as follows:

"That Information is currently being gathered and will be provided shortly".

Once again, no timely objection has been raised. Bartow has simply decided not to respond as required by the Rules of Civil Procedure.

15. Tampa Electric requests that Bartow be ordered to respond to Interrogatory No. 17 which reads as follows:

“Please identify all persons who participated in any in any findings, studies or discussions with respect to the City’s providing electrical services to customers in the OFP development area during the past five years.”

16. Bartow’s response to Interrogatory No. 17 is “None other than what has been provided previously in these answers”. This response is absurd on its face since no employees, agents or representatives of Bartow are identified elsewhere in Bartow’s interrogatory responses. If taken literally, Bartow’s response would suggest that no Bartow representative has participated in discussions pertaining to the provision of electric service by the City to customers in the OFP development area. However, in its petition, Bartow admits that such discussions have, in fact occurred. Therefore, Bartow’s answer to Interrogatory No. 17 must be false and is certainly evasive.

17. Tampa Electric requests that Bartow be ordered to respond to Interrogatory No. 18 which reads as follows:

“Please specify all rates, terms and conditions pursuant to which the City proposes to provide electric service to residents of the OFP property”.

18. Bartow’s response to Interrogatory No. 18 is that “The City is currently compiling this information, and it will be provided shortly.” In the absence of a timely objection, there is no justification for Bartow’s failure to respond.

19. Tampa Electric respectfully reminds the Commission that Bartow is the moving party in this proceeding and has the same obligation, as would any other party to abide by the Commission’s rules and the Florida Rules of Civil Procedure. Thus far, in this proceeding, Bartow has chosen to ignore those rules. If, as Tampa Electric believes, it has done so willfully, then its Petition should be dismissed.

WHEREFORE, Tampa Electric requests an order compelling Bartow to respond to Tampa Electric's First Request for Production of Documents (Nos. 1-20) and to Interrogatory Nos. 8, 10(d), 17 and 18 or, in the alternative, an order dismissing Bartow's Petition.

DATED this 22nd day of January, 2002.

Respectfully Submitted,

HARRY W. LONG JR.
Assistant General Counsel – Regulatory
Tampa Electric Company
P.O. Box 111
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and



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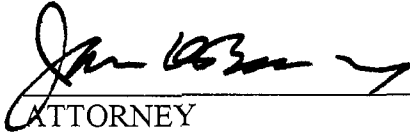
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Compel has been furnished by U. S. Mail or hand delivery (*) on this 22nd day of January, 2002 to the following:

Ms. Adrienne Vining*
Staff Counsel
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Mr. Davisson F. Dunlap, Jr.
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