

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of Cargill Fertilizer, Inc.) Docket No. 020898-EQ
to engage in self-service wheeling of waste) Filed: October 24, 2002
heat cogenerated power to, from and)
between points within Tampa Electric)
Company's service territory.)
_____)

**RESPONSE OF TAMPA ELECTRIC COMPANY TO THE MOTION OF
CARGILL FERTILIZER, INC. FOR ORDER COMPELLING EXPEDITED
DISCOVERY**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "Company") hereby responds to the October 18, 2002 Motion filed by Cargill Fertilizer, Inc. ("Cargill"), asking this Commission to expedite discovery in this matter by requiring Tampa Electric to: a) file any objections to discovery within five (5) days of service; b) respond to discovery within fifteen (15) days of service; and c) provide responses as they are completed rather than waiting until all responses are complete. In the alternative, Cargill requests that the date it is required to file its direct testimony be moved to 15 days after Tampa Electric answers the discovery posed by Cargill or is relieved from the obligation to respond. While Tampa Electric opposes Cargill's request for the expedited filing of objections and responses for the reasons set forth below, the Company does not object to the alternative relief that Cargill has requested. In support whereof, Tampa Electric says:

1. On October 14, 2002, Cargill served its 1st Set of Interrogatories to Tampa Electric Company (Nos. 1-22) and its 1st Request for Production of Documents to Tampa Electric Company (Nos. 1-6) in this proceeding. On October 16, Cargill served its 1st Request for Admissions to Tampa Electric Company (Nos. 1-7). As

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noted above, Cargill did not file the instant motion for expedited discovery until October 18, 2002, several days after its initial discovery requests had been propounded.

2. On October 22, 2002, Tampa Electric filed a motion with the Commission requesting that all procedural dates currently established in this proceeding, including those dates pertaining to formal discovery, be temporarily suspended or, in the alternative, that all procedural dates be pushed out by at least 120 days to permit the parties to obtain clarification from the Federal Energy Regulatory Commission (“FERC”) with regard to the terms on which self-service wheeling can be provided to Cargill and to explore the possibility of mediation in light of that clarification.
3. Should the Commission grant the relief requested in Tampa Electric’s October 22nd Motion, then Cargill’s Motion for Expedited Discovery should be denied and all formal discovery activity should be suspended. Under such circumstances, if the parties are ultimately unsuccessful in reaching a mediated resolution of the matters at issue in this case, then the Commission can establish a new procedural schedule, including the procedural dates for discovery and objections thereto, that affords the parties a reasonable opportunity to prepare and file testimony and exhibits.
4. Should the Commission deny the relief requested in Tampa Electric’s October 22nd Motion, then Cargill’s request for expedited discovery should be denied on the grounds that the request is both unreasonable and unnecessary.

5. Cargill's request to shorten the period for objections to discovery from ten (10) days to five (5) would have the patently unreasonable effect of depriving Tampa Electric of the opportunity to object to Cargill's October 14th and October 16th requests since such objections would have been due three days ago under Cargill's formulation. Furthermore, Cargill's proposed reduction of the response period from thirty (30) days to fifteen (15) creates an undue and unnecessary burden on Tampa Electric in compiling the necessary responsive information. While Tampa Electric certainly understands that Cargill is under some pressure to meet the November 13th filing date for its direct testimony under the current procedural schedule, Tampa Electric respectfully submits that there is no longer any need for the Commission to take extraordinary measures to expedite this proceeding.
6. Pursuant to Order No. PSC-02-1451-PCO-EQ, self-service wheeling to Cargill will continue on an interim basis until the Commission has considered and addressed Cargill's Petition. Ratepayers will be protected as the result of Cargill's corporate undertaking to cover any net cost to ratepayers attributable to self-service wheeling during the interim period. In short, the status quo is preserved and the need for expedition has been eliminated.
7. Under these circumstances, Tampa Electric respectfully suggests that the Commission can accommodate Cargill's need for an adequate opportunity to prepare and file its direct testimony by granting the alternative relief requested in Cargill's motion. Adjusting the current procedural schedule to make Cargill's direct testimony due fifteen (15) days following the date on which Tampa Electric

either responds to the discovery propounded by Cargill during the week of October 14th or is relieved of the obligation to respond. Under this approach, all of the procedural dates following the due date for Cargill's direct testimony would have to be adjusted correspondingly.

WHEREFORE, Tampa Electric respectfully requests that the Commission issue an order denying Cargill's request for expedited discovery in this proceeding and, to the extent that any relief is granted, that such relief be limited to the alternative relief requested by Cargill, as clarified in Paragraph 7 above.

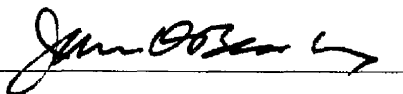
DATED this 24th day of October 2002.

Respectfully submitted,

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By: 

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion, filed on behalf of Tampa Electric Company, has been served by hand delivery (*) or U. S. Mail on this 24th day of October 2002 to the following:

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