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February 17, 2003

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

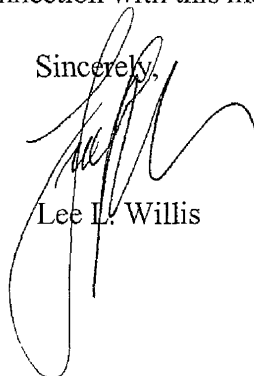
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Response of Tampa Electric Company to the City of Bartow's Motion to Compel Responses to Discovery Requests and Motion for 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,



Lee L. Willis

LLW/pp
Enclosures

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)
Electric Company, Polk County, Florida.)
_____)

DOCKET NO. 011333
FILED: February 17, 2003

**RESPONSE OF TAMPA ELECTRIC COMPANY TO THE CITY OF BARTOW'S
MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS AND MOTION
FOR SANCTIONS**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or the "Company") hereby responds to the Motion to Compel Responses to Discovery Requests and Motion For Sanctions that was filed with the Commission in this proceeding on February 10, 2003 on behalf of the City of Bartow ("Bartow" or the "City"). As discussed in more detail below, Bartow's Motion to compel is completely unsupported and devoid of merit. Bartow's Motion For Sanctions represents yet another abuse of the Commission's procedures, which, in itself, should give rise to sanctions against Bartow. In support whereof, Tampa Electric says:

1. On November 8, 2001, the City propounded and served on Tampa Electric by U.S. Mail its First Set of Interrogatories (Nos. 1-19).
2. Tampa Electric furnished its Answers and Objections to Bartow's First Set of Interrogatories by hand delivery to Bartow's attorney on December 13, 2001. In the absence of a procedural order, the timing of Tampa Electric's Answer and Objections was governed by Rule 1.340, Florida Rules of Civil Procedure, and Section 28-106.103, Florida Administrative Code, which provide for the filing of answers and objections to interrogatories within 30 days from the date of service, plus an additional 5 days if, as in this case, service is accomplished by U.S. Mail.

3. As part of its December 13th response, Tampa Electric objected to Interrogatory Nos. 1, 2 and 3 on the grounds that each interrogatory was “ambiguous, unnecessarily broad and called for a response that would be burdensome, if not impossible, to produce”. However, in the interest of moving the case forward and in a demonstration of good faith, Tampa Electric offered reasonable and direct responses to each of these interrogatories while preserving its right to object to a more burdensome and unreasonable demand by the City. Copies of Interrogatory Nos. 1, 2 and 3, along with Tampa Electric’s answers, are attached hereto as Exhibit A.

4. In its Motion to Compel, Bartow has failed to offer (or even suggest) a single reason why Tampa Electric should be compelled to expand the timely responses that it has already made to the above-mentioned interrogatories. The fact that it has taken Bartow over a year to file a Motion to Compel strongly suggests the lack of importance or probative value that Bartow places on any additional information that it might hope to obtain. In any event, the City, as the moving party, has the burden of demonstrating to the Commission that an additional response is warranted in light of the responses already provided and the unreasonably burdensome nature of any expanded discovery obligation. Tampa Electric respectfully submits that Bartow has not even attempted to meet this burden.

5. On April 12, 2002, the City propounded and served on Tampa Electric by U.S. Mail its Second Set of Interrogatories (Nos. 20-25) and its First Request For Production of Documents (No.1). Pursuant to order establishing procedure in this case, Order No. 02-0442, issued on March 28, 2002, objections to this discovery would have been due no later than April 27, 2002, with responses due by May 17, 2002. However, on April 24, 2002, Bartow filed a Motion for Continuance, requesting that “the proceedings and hearing date of July 18, 2002, be continued to a date after August 2002.” In light of Bartow’s motion, the Commission Staff

advised the parties that the then current procedural schedule would be temporarily suspended, pending Commission consideration of Bartow's motion. On the strength of this information, Bartow chose not to file its preliminary list of issues on April 24th, as required pursuant to the then current procedural schedule. Tampa Electric chose to file its preliminary list of issues in the hope that the procedural schedule could be maintained.

6. Once it became clear that the procedural schedule had been suspended and that the then current due dates for testimony and hearings could not be sustained, even if Bartow's motion for a continuance were denied, Tampa Electric suspended its discovery efforts.

7. On May 3, 2002, Tampa Electric filed its Motion to Dismiss and Answer In Opposition to the City of Bartow's Motion For Continuance of Final Hearing and Adjustment of Procedural Schedule.

8. On July 12, 2002, The Commission issued Order No. 02-0939, granting Bartow's request for a continuance and denying Tampa Electric's Motion to Dismiss. No new procedural schedule was established in the order. Instead, Bartow was directed to file a status report on the configuration of the Old Florida Plantation, or a revised Petition, by September 16, 2002.

9. The City filed its status report on September 16, 2002, stating, in relevant, part as follows:

Bartow has obtained a stipulation signed by the parties dated August 2, 2002, and filed in proceeding in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida, that establishes a new trial date of November 18, 2002. A copy of that stipulation I attached hereto as Exhibit A. Also attached, as Exhibit B is a copy of an order of the court establishing the November trial date. The configuration of the Old Florida Plantation should be known by that time.

10. On December 12, 2002, the City filed with the Commission a letter dated November 27, 2002 which contained the following report and request:

The City of Bartow ("Bartow") has received information from the developers of the Old Florida Plantation that a final configuration for the development, including the location of the "spine" road has been determined. A copy of a map depicting the Old Florida Plantation and its configuration, including the "spine" road is attached... With this information now in hand, this matter can be put back on schedule.

11. Subsequent to its December 12th filing, counsel for the City phoned counsel for Tampa Electric to inquire as to the Company's schedule for responding to Bartow's April 12, 2002 discovery requests. Tampa Electric advised counsel for Bartow that work on discovery had been suspended in late April in light of the suspension of the procedural schedule occasioned by Bartow's request. Bartow was further advised that Tampa Electric would respond promptly with responses and objections, where appropriate, if and when the Commission reinstated the procedural schedule associated with the case. To date, the Commission has not reinstated a procedural schedule for discovery, issue identification, filing of testimony and evidentiary hearings. At no time has Tampa Electric refused to respond to discovery in accordance with the Commission's rules and procedures. Any assertion to the contrary would be a blatant and serious misstatement of the facts. Bartow's lack of candor in failing to disclosing its discussion with Tampa Electric concerning the status of discovery and the intentionally inaccurate statement of Tampa Electric's position in Bartow's motion are adequate grounds for the imposition of sanctions on Bartow.

12. Once again, Bartow has failed to offer (or even suggest) a single reason why Tampa Electric now should be compelled to respond to Bartow's April 12th 2002 discovery requests when the procedural schedule was suspended, at Bartow's request, prior to the time when objections or answers were due. Given the uncertainty as to when, if ever, the procedural schedule would be reinstated, it would have been imprudent for Tampa Electric to expend time

and resources to address Bartow's requests at that time or subsequent to that time. The fact that Bartow did not inquire about its discovery responses until 6 months after the date that Bartow now claims such responses were due, serves only to underscore the absurdity of Bartow's Motion to Compel and Motion for Sanctions. If Bartow truly believed that responses were due on May 17, 2002, it would have discussed the matter with Tampa Electric shortly after the alleged due date or it would have filed a motion to compel long before now. Indeed,

13. If and when the procedural schedule is reinstated, Tampa Electric expects that it will be afforded a reasonable opportunity to respond to Bartow's requests and Bartow will be given a reasonable opportunity to prepare for hearings on the basis of the information provided. The current CASR for this Docket does not specify a procedural schedule beyond a Staff Recommendation on March 6, 2003 and a PPA on April 7, 2003. Under the circumstances presented, Bartow has failed to meet its burden of demonstrating that Tampa Electric should be compelled to respond, at this time, to the City's April 12, 2002 discovery requests.

14. Given the foregoing, it is clear that the City's request for sanctions is without merit. Tampa Electric has conducted itself in accordance with the letter and the spirit of the Commission's rules and procedures at all times. Bartow has failed to identify a single act or omission on Tampa Electric's part that would justify even the most fleeting consideration of sanctions. It is very obvious from Bartow's course of conduct over the past nine months that it considered that the entire procedural schedule, including all discovery, had been suspended. Therefore, in addition to the grounds for sanctions discussed in Paragraph 11 above, Bartow should be sanctioned for filing a frivolous pleading seeking sanctions, pursuant to Section 120.569(e), Florida Statutes.

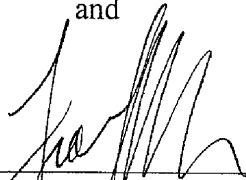
WHEREFORE, Respondent, Tampa Electric, urges the Commission, to deny Bartow's Motion to Compel Responses to Discovery Requests and Motion For Sanctions.

DATED this 17th day of February 2003.

Respectfully Submitted,

HARRY W. LONG JR.
Assistant General Counsel – Regulatory
Tampa Electric Company
P.O. Box 111
Tampa, Florida 33601

and



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JAMES D. BEASLEY
Ausley & McMullen
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

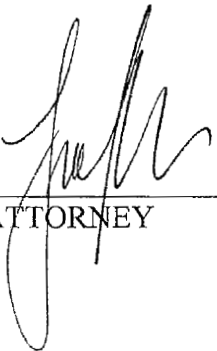
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer of Respondent, Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 17th day of February, 2003 to the following:

Ms. Adrienne Vining*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Davisson F. Dunlap, Jr.
Dunlap & Toole, P.A.
2057 Delta Way
Tallahassee, FL 32303

Mr. Joseph J. DeLegge
City of Bartow
P. O. Box 1069
Bartow, FL 33830-1069



ATTORNEY

TAMPA ELECTRIC COMPANY
DOCKET NO. 011333-EU
CITY OF BARTOW'S 1ST SET OF INTERROGATORIES
INTERROGATORY NO. 1
PAGE 1 OF 1
FILED: DECEMBER 13, 2001

1. List the names, addresses and daytime phone numbers of all persons who are believed or known by you, your agents, or your attorneys to have any knowledge concerning any of the issues in this proceeding before the Florida Public Service commission, and specify the subject matter about which each such person has knowledge.

A. Tampa Electric objects to Interrogatory No. 1 on the grounds that the interrogatory is ambiguous, unnecessarily broad and calls for a response that would be burdensome, if not impossible, to produce. However, without waiving its objection, Tampa Electric believes that the following persons have relevant knowledge of certain matters raised in the City of Bartow's (the "City") Petition in this proceeding:

Cindy Price, Regional Manager, Polk County, has knowledge of communications between Tampa Electric and the City with regard to the City's desire to serve the Old Florida Plantation ("OFP") property.

Lee Collins, Manager Operations & Engineering, Winter Haven, has knowledge with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property.

Gene West, Director of Eastern Business Region (retired), is believed to have knowledge of communications between Tampa Electric and the City with regard to the City's desire to serve the OFP property.

Rick Baldwin, Supervisor of Distribution Planning (no longer with Tampa Electric), is believed to have knowledge with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property.

Dan Breznay, Right-of-Way Liaison, Winter Haven, has knowledge with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property and with regard to the DRI request for information sent to Tampa Electric by the developers of the OFP property.

Nathan Quirk, Engineer, Distribution Planning, has knowledge with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property.

The above-mentioned individuals can be contacted through Counsel for Tampa Electric Company.

TAMPA ELECTRIC COMPANY
DOCKET NO. 011333-EU
CITY OF BARTOW'S 1ST SET OF INTERROGATORIES
INTERROGATORY NO. 2
PAGE 1 OF 1
FILED: DECEMBER 13, 2001

2. If any employees or agents of TECO have heard or know about any statement or remark made by or on behalf of any party to this petition concerning any issue in this proceeding before the Florida Public Service Commission, then state (a) the name, address and daytime phone number for each person who heard the statement; (b) the name, address and daytime phone number for each person who made the statement; (c) the date, time, place, and substance of each statement.
- A. Tampa Electric objects to Interrogatory No. 2 on the ground that it is ambiguous in that the "issues" in this proceeding have not yet been identified. However, without waiving its objection, Tampa Electric hereby states that it is not aware of any substantive statement or remark made by any employees or agents of the company to the Florida Public Service Commission about or on behalf of any party to this proceeding concerning any issue in this proceeding .

TAMPA ELECTRIC COMPANY
DOCKET NO. 011333-EU
CITY OF BARTOW'S 1ST SET OF INTERROGATORIES
INTERROGATORY NO. 3
PAGE 1 OF 1
FILED: DECEMBER 13, 2001

3. State the name, address and daytime phone number of every person known to Respondent who has knowledge about or possession, custody, or control of any document, model, plat, map, drawing, motion picture, videotape, or photograph pertaining to any fact or issue involved in this proceeding, and describe as to each what items such person has, the name and address of the person who took or prepared it, and the date it was taken or prepared.

A. Tampa Electric hereby objects to Interrogatory No. 3 on the grounds that it is ambiguous, unnecessarily broad and calls for a response that would be burdensome, if not impossible, to produce. However, without waiving its objection, Tampa Electric states, in response to Interrogatory No. 3 that the following persons have knowledge and/or possession of documents that may be relevant to certain of the matters raised by the City in this proceeding:

Cindy Price, Regional Manager, Polk County, has knowledge of or access to documents concerning customer service in the vicinity of the OFP property and the City's desire to serve the OFP property.

Lee Collins, Manager Operations & Engineering, Winter Haven, has knowledge of or access to documents, maps and other data with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property.

Nathan Quirk, Engineer, Distribution Planning, has knowledge of or access to documents, maps and other data with regard to Tampa Electric's electric distribution system in the vicinity of the OFP property.

The above-mentioned individuals can be contacted through Counsel for Tampa Electric Company.