

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition By Cargill Fertilizer, Inc.) Docket No. 020898-EQ
For permanent approval of self-service wheeling)
to, from and between points within Tampa Electric) Filed: August 18, 2003
Company's service territory)

**TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS (Nos. 1-18)**

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 Cargill Fertilizer, Inc. ("Cargill") to produce to Tampa Electric those documents that are responsive to Tampa Electric's First Request For Production of Documents (Nos.1-18) ("Document Requests") and says:

1. Cargill has objected to Document Request No.1 on the ground that "to the extent there are invoices that contain pricing information, the purchase agreement specifies that the information will be kept confidential". Cargill volunteers that it will compile the *incomplete* information in its records and supply it upon the execution of an appropriate confidentiality agreement, and *after due notice to the purchaser*.
2. Tampa Electric is willing to receive and review documents that are responsive to Document Request No. 1 pursuant to a reasonable

DOCUMENT NUMBER DATE

07634 AUG 18 03

FPSC-COMMISSION CLERK

non-disclosure agreement. However, Cargill's stated intention to provide *incomplete* information and the asserted prerequisite of *due notice to the purchaser* may suggest less than full compliance and the potential for unnecessary delay in producing responsive documents. Cargill should be ordered to produce all responsive documents in its possession or control without delay. Cargill has already had adequate time to provide due notice to any purchaser requiring such notice.

3. Tampa Electric requests that Cargill be ordered to fully respond to Document Request No. 8, which reads as follows:

Provide all documents that relate to the unplanned outages identified by Cargill in response to Tampa Electric Interrogatory No. 10.

4. Cargill has objected to Document Request No. 8 on the following asserted grounds:

a. The request seeks highly confidential, proprietary business information;
b. It would be burdensome, oppressive and unduly time-consuming for Cargill to respond when TECo already has the information readily available to it from its meters on Cargill's generation units and its own billing records.

5. Tampa Electric is willing to receive and review documents that are responsive to Document Request No. 8 pursuant to a reasonable non-disclosure agreement. Tampa Electric is requesting responsive documents in Cargill's possession or control. Cargill's assertion that Tampa Electric already has the requested

documents in its possession is incorrect. Obviously Tampa Electric does not know what responsive documents Cargill possess or controls. The point of the Document request is to discover what responsive documents Cargill possesses. Since Cargill has not questioned the relevance of the requested documents, the Commission should order Cargill to produce *all* responsive documents that are in Cargill's actual or constructive possession.

6. Tampa Electric requests that Cargill be ordered to fully respond to Document Request No. 14, which reads as follows:

Produce all documents that relate to the manner in which Cargill operates its generating units at the Bartow facility including but not limited to all operator logs, dispatch logs, procedure manuals and instructions, operator checklists and safety procedures.

7. Cargill objects to Document Request No. 14 on the grounds that it would be burdensome, oppressive and unduly time-consuming for Cargill to respond. Cargill further asserts, by way of objection, that scheduling records are maintained 5 days a week and merely duplicate information provided to Tampa Electric in the normal course of business.
8. Cargill's objection is puzzling in that Document Request No. 14 does not call for the production of scheduling records as Cargill suggests. Tampa Electric does not have the documents it requested from Cargill in Document Request No. 14. Since Cargill has not questioned the relevance of the requested documents, the

Commission should order Cargill to produce *all* responsive documents that are in Cargill's actual or constructive possession.

9. Counsel for Tampa Electric has attempted to confer with counsel for Cargill regarding this Motion, but was unable to make contact.

WHEREFORE, Tampa Electric requests an order:

- a) Directing Cargill to prepare and submit to Tampa Electric for review a reasonable non-disclosure agreement covering those documents or portions thereof that are responsive to Tampa Electric's First Set Request For Production Of Documents (Nos. 1-18) that Cargill deems to be confidential;
- b) Compelling Cargill to fully respond to Tampa Electric Document Request Nos. 1, 8 and 14 or, in the alternative, an order dismissing Cargill's Petition.

DATED this 18th day of August, 2003.

Respectfully Submitted,

HARRY W. LONG JR.
Assistant General Counsel – Regulatory
Tampa Electric Company
P.O. Box 111
Tampa, Florida 33601
(850) 228-1702

And

LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32303
(850) 224-9115

By: *Jan Berry*

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 18th day of August, 2003 to the following:

Rosanne Gervasi*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman &
Arnold
400 North Tampa Street, Suite 2450
Tampa, FL 33601-3350

Ms. Vicki Gordon Kaufman*
Mr. Joseph A. McGlothlin
Mr. Timothy J. Perry
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman &
Arnold
117 South Gadsden Street
Tallahassee, FL 32301



ATTORNEY