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TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

ORIGINAL

September 2, 2003

HAND DELIVERED

RECEIVED-FPSC
03 SEP -2 PM 4:47
COMMISSION
CLERK

Ms. Blanca S. Bayo, Director
Division of Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Application of Cargill Fertilizer, Inc. to engage in self-service wheeling of waste heat cogenerated power to, from and between points within Tampa Electric Company's Service Territory; FPSC Docket No. 020898-EQ

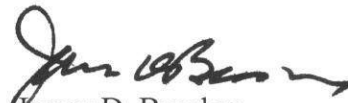
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion for Extension of Time to File Testimony and Motion to Compel Production of Documents (Nos. 1-18).

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

- AUS _____
- CAF _____
- CMP _____
- COM 3
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- SEC 1
- OTH _____

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

RECEIVED & FILED

R. V. N.

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

08164 SEP-23

FPSC-COMMISSION CLERK

ORIGINAL

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: September 2, 2003
Company's service territory)

**TAMPA ELECTRIC COMPANY'S MOTION FOR EXTENSION OF TIME
TO FILE TESTIMONY AND MOTION TO COMPEL
PRODUCTION OF DOCUMENTS (Nos. 1-18)**

Pursuant to Rule 1.380, Florida Rules of Civil Procedure, and Rules 28-106.204 and 28-106.206, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "Company") hereby requests that this Commission issue an order granting Tampa Electric a two week extension of the due date for its testimony in this proceeding in light of Cargill Fertilizer, Inc.'s ("Cargill") failure to cooperate in the discovery process. Further, Tampa Electric requests that this Commission issue an order compelling Cargill to Produce to Tampa Electric those documents that are responsive to Document Request No. 2 of Tampa Electric's First Request For Production of Documents (Nos.1-18) ("Document Requests"). In support thereof, Tampa Electric says:

I. Request For Extension Of Time To File Rebuttal Testimony

1. On July 24, 2003, the Commission issued Order No. PSC-03-0866-PCO-EQ (the "Procedural Order"), which established the procedure to be followed by the parties in this docket. With regard to discovery, the Commission stated, in relevant part, that:

DOCUMENT NUMBER-DATE

08164 SEP-28

FPSC-COMMISSION CLERK

Parties shall avail themselves of the liberal discovery allowed by this order and within the timeframes set forth above. Parties are cautioned against conducting discovery during cross-examination at the hearing.

2. With this admonition in mind, Tampa Electric filed a motion for clarification of the Procedural Order on July 30, 2003. Under one interpretation of the Procedural Order, Tampa Electric would have only two weeks to review Cargill's direct testimony, conduct discovery with regard to that testimony and file responsive testimony. Tampa Electric was concerned that this interpretation of the Procedural Order, if correct, would not give Tampa Electric a reasonable opportunity to prepare its testimony. Therefore, Tampa Electric requested that if the above-mentioned interpretation of the Procedural Order was correct, that the Procedural Order be modified to allow Tampa Electric file its testimony 15 days after Cargill fully answers discovery propounded by Tampa Electric with regard to Cargill's Direct Testimony.
3. In an effort to conduct as much useful discovery as possible before Cargill filed its direct testimony, Tampa Electric served its first set of discovery requests on Cargill on August 1, 2003. Tampa Electric's Document Requests included the following specific request:

Please produce the requested documents to Harry W. Long Jr. at Tampa Electric Company, 702 N. Franklin St., Tampa, Florida 33602.

4. On August 7, 2003, the Commission issued Order No. PSC-03-0909-PCO-EQ, which, among other things, modified the due dates for testimony previously set forth in the Procedural Order without addressing the ambiguity in the Procedural Order raised in Tampa Electric's July 27th Motion for Clarification. The newly established procedural dates for testimony were as follows:

- | | |
|--|---------------------------|
| <i>1) Cargill's direct testimony and exhibits</i> | <i>September 3, 2003</i> |
| <i>2) TECO's <u>direct</u> testimony and exhibits/
Staff's direct testimony and exhibits, if any</i> | <i>September 17, 2003</i> |
| <i>3) Rebuttal testimony and exhibits/
Prehearing Statements"</i> | <i>October 1, 2003</i> |

5. Cargill filed its objections to Tampa Electric's Document Requests on August 11, 2003. On August 18, 2003, Tampa Electric filed a Motion To Compel Responses to Discovery Requests. On August 25, 2003, Cargill responded to Tampa Electric's Motion To Compel. In neither of its above-mentioned pleadings did Cargill object to Tampa Electric's request that responsive documents be produced at Tampa Electric's Tampa Offices.

6. On August 20, 2003, the Commission issued Order No. PSC-03-0945-PCO-EQ in response to Tampa Electric's July 27th Motion for Clarification of the Procedural Order. In this clarifying order, the Commission confirmed its intent to have Tampa Electric file its testimony two weeks after Cargill filed its direct testimony. However, the Commission denied Tampa Electric's request that its testimony not be due until 15 days after Cargill fully answers

discovery propounded by Tampa Electric with regard to Cargill's Direct Testimony. The Commission explained that Tampa Electric's request was denied "due to the time constraints in this case".

7. On August 20th, counsel for Cargill delivered a letter by e-mail in which Cargill indicated, for the first time, that it would not deliver responsive documents to Tampa Electric's offices, as requested in the August 1st Document Request. Instead, after acknowledging that responses were due on September 2nd, Cargill offered to make responsive documents available at its "premises" at a mutually convenient time after September 2nd. Cargill also attached a draft non-disclosure agreement intended to cover confidential documents that it intended to produce. A copy of Cargill's August 20th letter is attached hereto as Exhibit A.
8. On August 21st, counsel for Tampa Electric contacted counsel for Cargill to discuss Cargill's August 21st letter. Counsel for Tampa Electric reminded counsel for Cargill of Tampa Electric's written request that responsive documents be produced at Tampa Electric's offices and expressed a strong preference that responsive documents be so produced. Tampa Electric further objected to Cargill's apparent intention not to make responsive documents available to Tampa Electric by September 2nd, as required under the Rules of Civil Procedure. Tampa Electric explained that any

delay in granting Tampa Electric access to responsive discovery material would make it increasingly unlikely that Tampa Electric would be able to prepare its rebuttal testimony by September 17th, as required. Counsel for Tampa Electric also advised counsel for Cargill that Tampa Electric wanted to arrange for the deposition of all witnesses for whom Cargill intended to file direct testimony. Tampa Electric requested that Cargill agree to depositions of its witnesses as soon as possible after the September 3rd due date for Cargill's direct testimony. Finally, Tampa Electric indicated that the non-disclosure agreement proposed by Cargill would probably be satisfactory with a minor change.

9. Counsel for Cargill indicated that she believed that Cargill would not be willing to produce responsive documents at Tampa Electric's offices but that she would raise the matter with Cargill again in light of Tampa Electric's concerns. Counsel for Cargill further indicated that she would check the schedules of the appropriate individuals within Cargill in connection with deposition dates and dates when Tampa Electric might be permitted to review responsive documents at Cargill's "premises". Finally, counsel for Cargill agreed to consult with her client with regard to the minor modification to the non-disclosure agreement requested by Tampa Electric.

10. Several days later, on August 26, 2003, counsel for Tampa Electric and Cargill conferred by telephone with regard to the matters described in Paragraphs 8 and 9 above. Counsel for Cargill confirmed Cargill's refusal to produce responsive documents at Tampa Electric's offices but was unable to specify when Tampa Electric would be given access to responsive documents at Cargill's "premises". Counsel for Cargill was also unable to specify when Cargill's witnesses would be available for depositions. However, Counsel for Cargill reported that Cargill would agree to the minor modification to the non-disclosure agreement requested by Tampa Electric.
11. Well after the close of business on August 28th, less than 2 business-days before responses to discovery were due, Counsel for Cargill forwarded a letter by e-mail, attached hereto as Exhibit B, announcing that it had come to Cargill's attention that certain documents responsive to Tampa Electric Document Request No. 2 were highly confidential and that access to documents responsive to Document Request No 2 would be limited to Tampa Electric legal personnel and outside consultants only. No explanation was offered as to why the non-disclosure agreement previously proposed by Cargill would not provide adequate protection. A revised non-disclosure agreement reflecting this new and unexplained restriction was attached to Cargill's letter.

12. Just prior to Noon on August 29th, one business day prior to the due date for discovery responses, counsel for Cargill advised Tampa Electric that some documents responsive to Tampa Electric's Document Request would be made available at Cargill's plant in Bartow, Florida while other responsive documents would be made available at Cargill's offices in Tampa. However, Tampa Electric would not be allowed to visit either location to review documents until September 4th, two business days after the due date for the responses. Tampa Electric was further advised that it would not be permitted to divide its resources into two teams to review documents at both sites simultaneously, thereby saving valuable time in light of the September 17th due date for Tampa Electric testimony. Cargill's refusal to permit Tampa Electric to visit both sites simultaneously was based on Cargill's contention that it had but one individual in their entire company who was competent to supervise Tampa Electric's review of the responsive documents. Therefore, according to Cargill, it was "unable" to accommodate Tampa Electric's request to visit both sites simultaneously. Counsel for Cargill further advised Tampa Electric that it would file direct testimony by four witnesses on September 3rd. Cargill volunteered that two of the witnesses could be made available for depositions on September 8th (five days after their testimony is due) and the remaining two witnesses could be made

available for depositions on September 10th (seven days after their testimony is due). A copy of Cargill's September 29th letter is attached hereto as Exhibit C.

13. Prior to the close of business on August 29th, counsel for Cargill advised Tampa Electric that Cargill had revised its position with regard to Document Request No. 2. Instead of restricting access to all confidential, responsive documents to Tampa Electric Lawyers and outside consultants, Cargill proposed to impose this restriction with regard to one responsive document. However, Cargill did not offer any explanation as to why the non-disclosure agreement that it originally proposed did not afford adequate protection with regard to the document in question.
14. Pursuant to Rule 1.350 (b), Florida Rules of Civil Procedure, a request for production of documents *shall set forth a reasonable time, place and manner of making the inspection* [of the documents requested]. The Rule further specifies that *the party to whom the request is directed shall serve a written response within 30 days after service of the request*. Finally, the Rule requires, in relevant part, that *the response state that inspection and related activities will be permitted as requested unless the request is objected to*.
[Emphasis added]
15. As noted in Paragraphs 3 and 5 above, Tampa Electric requested that responsive documents be produced at its Tampa offices and

Cargill has not filed an objection to this request; nor has Cargill filed a motion with this Commission requesting an extension of time within which to respond to Tampa Electric's August 1st Document Requests. Under these circumstances, Cargill's refusal to produce responsive documents, as requested, and its refusal to grant Tampa Electric any access to responsive documents until two days after responses are due under the Rules of Civil Procedure is an unconscionable abuse of this Commission's accepted practices and procedures.

16. As discussed above, Tampa Electric has been diligent in its efforts to work with Cargill well in advance of the due date for responses to Tampa Electric's discovery requests. However, Cargill's intransigence with regard to discovery and its inability to make all of its witnesses available for depositions until well into the week of September 8th make it impossible for Tampa Electric to complete discovery with regard to Cargill's direct testimony and file rebuttal testimony by September 17, as required under the current procedural schedule. Even on an expedited basis, deposition transcripts would not be available until a few days prior to September 17th. Late filed deposition exhibits that would be crucial to understanding Cargill's direct testimony would probably not be available until well after September 17th.

17. Tampa Electric does not expect to receive Cargill's direct testimony until the close of business on September 3rd, at the earliest. Cargill's refusal to provide access to responsive documents until September 4th would require Tampa Electric to review responsive documents at a remote location, review the direct testimony of Cargill's four witnesses, prepare written discovery requests in connection with that testimony and prepare to depose those four witnesses, all within two business days or four calendar days. Under these circumstances, it would be neither fair nor reasonable to require Tampa Electric to file its testimony by September 17th.
18. In light of the circumstances described above, Tampa Electric respectfully requests that the procedural schedule be modified to provide for the filing of testimony by Tampa Electric on October 1, 2003 and that the other remaining procedural dates be revised commensurately.

II. Motion To Compel

19. Tampa Electric requests that Cargill be ordered to fully respond to Document Request No. 2, which reads as follows:

Provide all documents related to evaluated, proposed, planned, implemented or completed generation expansion projects for Cargill electric generation facilities located within the Tampa Electric service area from January 1, 1997 through the present date.

20. As a general matter, Cargill has agreed to provide documents that are responsive to Document Request No. 2 pursuant to a non-disclosure agreement. Tampa Electric is willing to review responsive documents pursuant to a non-disclosure agreement. However, as discussed in Paragraph 13 above, Cargill has recently identified a responsive document that it deems to be so highly confidential that it is only willing to produce the document in question under a non-disclosure agreement that limits access to this document to Tampa Electric's lawyers and outside consultants.
21. Cargill has provided no description of the document in question and has offered no explanation as to why the non-disclosure agreement that will cover its other confidential documents does not provide adequate protection in this instance.
22. As a general matter, an understanding of Cargill's expansion plans is essential to understanding whether the benefits and costs observed during the self-service wheeling experiment are representative of the costs and benefits to ratepayers that the Commission might expect if self-service wheeling is made permanent as Cargill has requested. Therefore, it is important that Tampa Electric's internal experts have access to the information apparently contained in the document in question, pursuant to a reasonable non-disclosure agreement.

23. The undersigned has conferred with counsel for Cargill regarding the filing of this Motion, and was advised Cargill will respond in writing to the Motion.

WHEREFORE, Tampa Electric requests an order:

- a) Modifying the procedural schedule in this proceeding to require that Tampa Electric's testimony be filed on October 1, 2003 and that the balance of the procedural schedule be adjusted commensurately; and
- b) Compelling Cargill to fully respond to Tampa Electric Document Request No. 2, pursuant to a reasonable non-disclosure agreement, without limiting access to any such responsive documents to Tampa Electric's lawyers and outside consultants only.

DATED this 2nd day of September, 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:  _____

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

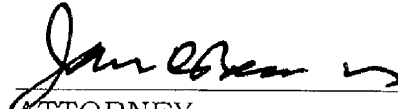
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Extension of Time, filed on behalf of Tampa Electric Company, has been furnished by U.S. Mail or hand delivery(*) on this 24 day of September 2003 to the following:

Ms. Rosanne Gervasi*
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. John W. McWhirter, Jr.
McWhirter Reeves McGlothlin
Davidson Decker Kaufman
& Arnold P.A.
400 North Tampa Street, Suite 2450
Tampa, FL 33601-5126

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



ATTORNEY

MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350, TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 33201
(850) 222-2525
(850) 222-5606 FAX

August 20, 2003
Via Email

Harry W. Long, Jr.
Assistant General Counsel
Tampa Electric Company
P.O. Box 111 (33601)
702 North Franklin Street
6th Floor, Regulatory Affairs
Tampa, FL 33602

Re: Docket No. 020898-EI

Dear Harry:

Enclosed is a Protective Agreement for your review. We will need to have such an Agreement in place before Cargill provides you with any confidential responses to TECo's discovery. This Agreement is essentially the same as the one Cargill executed in advance of receiving TECo's confidential information. However, if you have any suggested changes, please let me know. Otherwise, please execute the Agreement and return it to me.

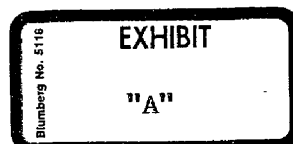
In addition, Cargill intends to respond to many of your discovery requests by inviting you to come to Cargill's premises to review the pertinent information. After review, you may designate the materials you would like copied. So as to avoid any delay, you may want to arrange with me in advance of the actual due date for Cargill's responses when you would prefer to review the materials. By my calculations, Cargill's responses are due on September 2nd. By prior arrangement, they will be available for review at a mutually acceptable time and day any time after that date.

Sincerely,

Vicki

Vicki Gordon Kaufman
encl.

Cc: Roger Fernandez
John W. McWhirter, Jr.
James D. Beasley



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition By Cargill Fertilizer, Inc.
For permanent approval of self-service wheeling
to, from and between points within Tampa Electric
Company's service territory _____ /

Docket No. 020898-EQ

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into by and between Tampa Electric Company (TECo or "the company") and Cargill Fertilizer, Inc. (Cargill), by and through their respective undersigned counsel.

Recitals

TECo has asked Cargill to produce certain documents pursuant to Tampa Electric's First Request For Production Of Documents (Nos. 1-14) and to provide certain information pursuant to TECo's First Set Of Interrogatories (Nos. 1-22) in this proceeding. Cargill's responses to Interrogatory Nos. 1, 2, and 15, as well as Production Request No. 1 contain highly confidential, proprietary business information.

The Florida Public Service Commission (the Commission) has adopted a detailed rule, Rule 25-22.006, Florida Administrative Code (Rule), for dealing with proprietary confidential business information. Under this Rule, the party claiming that information is proprietary confidential business information must file a Request for Confidential Classification before such information is submitted to the Commission.

Under paragraph 7(b) of the Rule, all parties to proceedings are urged to seek mutual agreement regarding access to Confidential Documents and information prior to bringing a controversy over such access to the Commission for decision. Under the rule, such agreements do not constitute a waiver of any claim of or objection to confidentiality a party may have.

Agreement

Accordingly, in accordance with paragraph 7(b) of the Rule, and to facilitate the timely review of the information that TECo has requested of Cargill, TECo and Cargill hereby promise and agree as follows:

1. Applicability. The terms of this Agreement shall cover all Confidential Documents produced by Cargill in response to TECo's First Request for Production of Documents (Nos. 1-14) and First Set of Interrogatories (Nos. 1-22).

2. Procedures for Production and Review of Confidential Documents.

a. TECo and its Authorized Representatives, as defined below, will review the Confidential Documents only in strict accordance with this Agreement. Cargill will make the Confidential Documents available for review only once TECo has executed this Agreement. TECo and its Authorized Representatives shall not, without the prior written consent of Cargill, disclose the contents of any of the Confidential Documents to anyone other than TECo's Authorized Representatives. For purposes of this agreement, the TECo's "Authorized Representatives" shall be limited to legal counsel, consultants and employees or officers of TECo: 1) who are not engaged in wholesale power marketing activities on behalf of the TECo, its parent, affiliates or subsidiaries, 2) who have a need to review the information in connection with the subject matter of this Docket No. 020898-EQ; and 3) have signed this Agreement or the acknowledgment attached to this Agreement.

- b. While the Confidential Documents are in the possession of TECo's counsel and consultants, they shall individually and collectively implement procedures that are adequate to ensure that the Confidential Documents are not disclosed to anyone other than those persons covered by this Agreement.
- c. Before any TECo consultant reviews Confidential Documents, such person shall sign a written acknowledgment in the form of the NON-DISCLOSURE AGREEMENT attached hereto as Exhibit "A", that he or she has read this Agreement and agrees to abide by its terms. The total number of persons who may review the Confidential Documents pursuant to this Agreement shall not exceed five (5) without the express written permission of Cargill. Each person shall sign the acknowledgment attached to this Agreement as Exhibit "A".
- d. The Confidential Documents and copies thereof produced pursuant to this Agreement shall remain the property of Cargill. Such Confidential Documents and copies shall not be used for any purpose unrelated to the proceeding in FPSC Docket No. 020898-EQ.

3. Pre-Hearing Procedure. If TECo wishes to use Confidential Documents provided by Cargill, or information contained in such documents, in testimony or exhibits to be filed in this proceeding, then TECo shall file its testimony and/or exhibits with the Confidential Documents or information redacted. TECo shall simultaneously file an un-redacted version of its testimony and exhibits under seal with the Commission, along with a Notice of Intent To Request Confidential Classification, indicating that Cargill will file a Request For Confidential

Classification covering the Confidential Information at issue pursuant to the Commission's Rules. At least seven (7) working days before the final hearing in the above-styled docket, TECo's counsel shall provide Cargill with a list of additional Confidential Documents, if any, that TECo intends to use at the final hearing. All Confidential Documents not listed by TECo shall be returned to Cargill upon the entry of a final, non-appealable order in this case. Upon receipt of the list from TECo's counsel, Cargill shall within a reasonable time file a Request for Confidential Classification covering the Confidential Documents on the list. Nothing in this Agreement is intended to preclude TECo from challenging the merits of whether a particular document is proprietary confidential business information within the meaning of Section 366.093, Florida Statutes. If the Commission should rule that any confidential document or information contained therein is not entitled to confidential protection, Cargill would be afforded the opportunity to pursue a timely motion for reconsideration and appeal of such ruling and the confidential treatment afforded by this Agreement would remain in full force and effect through the final outcome of any reconsideration and appeal proceedings (or beyond if the reconsideration or appeal is successful).

4. Term. This Agreement shall be effective from the date it is executed by the parties until the conclusion of the above-styled docket. At the end of the term of this Agreement, or before, TECo's counsel and consultants shall return all Confidential Documents of Cargill remaining in its possession to the undersigned counsel for Cargill.

5. Remedies. In the event that TECo or any of its Authorized Representatives discloses, disseminates or releases any information contained in any Confidential Document without proper authorization, Cargill may refuse to provide any further proprietary information and may demand prompt return to Cargill of all Confidential Documents previously provided

pursuant to this Agreement. The parties agree: divulgence or unauthorized use of the Confidential Documents could damage Cargill; the amount of resulting damages could be difficult to ascertain; Cargill may not reasonably or adequately be compensated for public disclosure of such information in damages alone; and Cargill shall be entitled to injunctive or other equitable relief to prevent or remedy a breach of this agreement or any part of it. Nothing herein is intended to restrict any remedies available to the parties for disclosure, dissemination or release of proprietary information by another party involved in this agreement.

6. Authority. The undersigned acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

7. Modifications. This Agreement can be modified by further written agreement of the parties. If the parties are unable to agree on a mutually acceptable modification, either party may petition the FPSC to determine the basis on which such documents will be made available for review by TECo's expert witnesses.

DATED this _____ day of _____, 2003.

VICKI GORDON KAUFMAN
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

and

JOHN W. MCWHIRTER, JR.
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman & Arnold, P.A.
400 North Tampa Street – Suite 2450
Tampa, FL 33601-3350

ATTORNEYS FOR CARGILL

LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302

and

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

ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

Exhibit "A"

NON-DISCLOSURE AGREEMENT

The undersigned hereby certifies that prior to the disclosure to them of certain information and documents belonging to or in the possession of, or made available by Cargill, which are considered by Cargill or the owner of such information or documents, to be of a trade secret, privileged or confidential nature, they have read the Non-Disclosure Agreement between Teco and Cargill for purposes of FPSC Docket No. 020898-EQ, and agree to be bound by its terms.

_____	_____
_____	_____
_____	_____
_____	_____

MCWHIRTER REEVES

ATTORNEYS AT LAW

TAMPA OFFICE
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350, TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 33201
(850) 222-2525
(850) 222-5606 FAX

August 28, 2003
Via Email

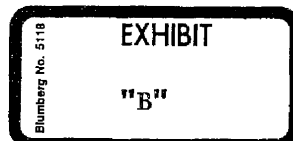
Harry W. Long, Jr.
Assistant General Counsel
Tampa Electric Company
P.O. Box 111 (33601)
702 North Franklin Street
6th Floor, Regulatory Affairs
Tampa, FL 33602

Re: Docket No. 020898-EI

Dear Harry:

After I sent you the proposed Protective Agreement on August 20th, and during the course of preparation of our discovery responses, it has come to our attention that certain documents responsive to Production Request No. 2 are highly confidential. Therefore, access to those documents must be limited to TECo legal personnel and consultants only. TECo engineering, accounting or operational personnel may not have access to the documents. I have amended § 2.a. of the Agreement I originally provided and enclose a new copy. We will need to have such an Agreement in place before Cargill provides you with any confidential responses to TECo's discovery on September 2nd.

In our Objections filed on August 11th, we specifically reserved the right to supplement, revise, or modify our objections if we discovered additional grounds for objection during the preparation of our responses. Accordingly, in our response to the Request to Produce, we intend to object to providing access to documents responsive to Production Request No. 2 to TECo engineering, accounting or operational personnel on the basis of confidentiality.



Mr. Long
August 28, 2003
Page 2

Finally, per your request, we have changed the number of persons who may review documents from five (5) to ten (10) in § 2.c of the Agreement.

Sincerely,

Vicki

Vicki Gordon Kaufman
encl.

Cc: Roger Fernandez
John W. McWhirter, Jr.
James D. Beasley

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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Agreement

Accordingly, in accordance with paragraph 7(b) of the Rule, and to facilitate the timely review of the information that TECo has requested of Cargill, TECo and Cargill hereby promise and agree as follows:

1. Applicability. The terms of this Agreement shall cover all Confidential Documents produced by Cargill in response to TECo's First Request for Production of Documents (Nos. 1-14) and First Set of Interrogatories (Nos. 1-22).

2. Procedures for Production and Review of Confidential Documents.

a. TECo and its Authorized Representatives, as defined below, will review the Confidential Documents only in strict accordance with this Agreement. Cargill will make the Confidential Documents available for review only once TECo has executed this Agreement. TECo and its Authorized Representatives shall not, without the prior written consent of Cargill, disclose the contents of any of the Confidential Documents to anyone other than TECo's Authorized Representatives. For purposes of this agreement, with the exception of Production Request No. 2, TECo's "Authorized Representatives" shall be limited to legal counsel, consultants and employees or officers of TECo: 1) who are not engaged in wholesale power marketing activities on behalf of the TECo, its parent, affiliates or subsidiaries, 2) who have a need to review the information in connection with the subject matter of this Docket No. 020898-EQ; and 3) have signed this Agreement or the acknowledgment attached to this Agreement. With respect to documents produced in response to Production Request No. 2

only, "Authorized Representatives" are limited to legal counsel and consultants of TECo. TECo engineering, accounting and operational personnel are specifically excluded from access to documents produced in response to Production Request No. 2.

- b. While the Confidential Documents are in the possession of TECo's counsel and consultants, they shall individually and collectively implement procedures that are adequate to ensure that the Confidential Documents are not disclosed to anyone other than those persons covered by this Agreement.
- c. Before any TECo consultant reviews Confidential Documents, such person shall sign a written acknowledgment in the form of the NON-DISCLOSURE AGREEMENT attached hereto as Exhibit "A", that he or she has read this Agreement and agrees to abide by its terms. The total number of persons who may review the Confidential Documents pursuant to this Agreement shall not exceed ten (10) without the express written permission of Cargill. Each person shall sign the acknowledgment attached to this Agreement as Exhibit "A".
- d. The Confidential Documents and copies thereof produced pursuant to this Agreement shall remain the property of Cargill. Such Confidential Documents and copies shall not be used for any purpose unrelated to the proceeding in FPSC Docket No. 020898-EQ.

3. Pre-Hearing Procedure. If TECo wishes to use Confidential Documents provided by Cargill, or information contained in such documents, in testimony or exhibits to be filed in

this proceeding, then TECo shall file its testimony and/or exhibits with the Confidential Documents or information redacted. TECo shall simultaneously file an un-redacted version of its testimony and exhibits under seal with the Commission, along with a Notice of Intent To Request Confidential Classification, indicating that Cargill will file a Request For Confidential Classification covering the Confidential Information at issue pursuant to the Commission's Rules. At least seven (7) working days before the final hearing in the above-styled docket, TECo's counsel shall provide Cargill with a list of additional Confidential Documents, if any, that TECo intends to use at the final hearing. All Confidential Documents not listed by TECo shall be returned to Cargill upon the entry of a final, non-appealable order in this case. Upon receipt of the list from TECo's counsel, Cargill shall within a reasonable time file a Request for Confidential Classification covering the Confidential Documents on the list. Nothing in this Agreement is intended to preclude TECo from challenging the merits of whether a particular document is proprietary confidential business information within the meaning of Section 366.093, Florida Statutes. If the Commission should rule that any confidential document or information contained therein is not entitled to confidential protection, Cargill would be afforded the opportunity to pursue a timely motion for reconsideration and appeal of such ruling and the confidential treatment afforded by this Agreement would remain in full force and effect through the final outcome of any reconsideration and appeal proceedings (or beyond if the reconsideration or appeal is successful).

4. Term. This Agreement shall be effective from the date it is executed by the parties until the conclusion of the above-styled docket. At the end of the term of this Agreement, or before, TECo's counsel and consultants shall return all Confidential Documents of Cargill remaining in its possession to the undersigned counsel for Cargill.

5. Remedies. In the event that TECo or any of its Authorized Representatives discloses, disseminates or releases any information contained in any Confidential Document without proper authorization, Cargill may refuse to provide any further proprietary information and may demand prompt return to Cargill of all Confidential Documents previously provided pursuant to this Agreement. The parties agree: divulgence or unauthorized use of the Confidential Documents could damage Cargill; the amount of resulting damages could be difficult to ascertain; Cargill may not reasonably or adequately be compensated for public disclosure of such information in damages alone; and Cargill shall be entitled to injunctive or other equitable relief to prevent or remedy a breach of this agreement or any part of it. Nothing herein is intended to restrict any remedies available to the parties for disclosure, dissemination or release of proprietary information by another party involved in this agreement.

6. Authority. The undersigned acknowledge and represent that they have actual authority to enter into this Agreement on behalf of their respective clients.

7. Modifications. This Agreement can be modified by further written agreement of the parties. If the parties are unable to agree on a mutually acceptable modification, either party may petition the FPSC to determine the basis on which such documents will be made available for review by TECo's expert witnesses.

DATED this _____ day of _____, 2003.

VICKI GORDON KAUFMAN
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

and

JOHN W. MCWHIRTER, JR.
McWhirter, Reeves, McGlothlin, Davidson,
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and

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

ATTORNEYS FOR TAMPA ELECTRIC
COMPANY

Exhibit "A"

NON-DISCLOSURE AGREEMENT

The undersigned hereby certifies that prior to the disclosure to them of certain information and documents belonging to or in the possession of, or made available by Cargill, which are considered by Cargill or the owner of such information or documents, to be of a trade secret, privileged or confidential nature, they have read the Non-Disclosure Agreement between TECo and Cargill for purposes of FPSC Docket No. 020898-EQ, and agree to be bound by its terms.

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350, TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
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August 29, 2003

Harry W. Long, Jr.
Assistant General Counsel
Tampa Electric Company
P.O. Box 111 (33601)
702 North Franklin Street
6th Floor, Regulatory Affairs
Tampa, Florida 33602

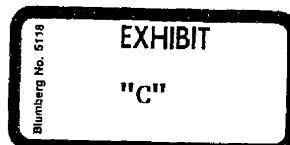
Re: Docket No. 020898-EI

Dear Harry:

Pursuant to our discussion yesterday, Cargill will make Mr. Roger Fernandez and Mr. Gerard Kordecki available for deposition at our Tampa offices on September 8th beginning with Mr. Fernandez at 10 am. We will have two other witnesses who we will make available on September 10th in Tampa. In addition, just so Cargill's position is clear, we will produce our witnesses for deposition in this case one time. To the extent you go forward with the depositions in early September, Cargill will not agree to produce these same witnesses again, should any of them file rebuttal testimony.

Cargill would like to take the depositions of all witnesses who file testimony on TECo's behalf. We would also like to schedule the depositions of Mr. Black, Mr. Barringer, and the TECo employee(s) in charge of scheduling transmission service to the extent they do not prefile testimony. We would like to schedule these depositions the week of September 22nd, so please provide me with availability so I may send out the notices.

Finally, in response to your request that we schedule a time for you to review the documents which Cargill has agreed to produce on site, we will make those documents available for review the morning of September 4th beginning at 9 am. The documents are located at the Cargill plant in Bartow and the Cargill plant in Tampa. Please let me know which



Mr. Long
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location you would prefer to visit first. Prior to gaining access to the Cargill plants, I need to know the number of people who will be coming and each person's name and title for security purposes. The sooner you can get me this information, the sooner we can facilitate the review. Additionally, prior to review, we must receive an executed copy of the Protective Agreement I provided to you yesterday.

Please let me know if you have any questions.

Sincerely,

Vicki

Vicki Gordon Kaufman

Cc: Roger Fernandez
John McWhirter, Jr.
James D. Beasley