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September 4, 2003

HAND DELIVERED

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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 Response to Cargill Fertilizer, Inc.'s Motion for Reconsideration of a Portion of Order No. PSC-03-0945-PCO-EQ.

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,

RECEIVED & FILED  
lh

  
James D. Beasley

FPSC-BUREAU OF RECORDS

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- OTH \_\_\_\_\_

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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

# ORIGINAL

## 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: September 4, 2003  
heat cogenerated power to, from and )  
between points within Tampa Electric )  
Company's service territory. )  
\_\_\_\_\_ )

**RESPONSE OF TAMPA ELECTRIC COMPANY TO CARGILL FERTILIZER,  
INC.'S MOTION FOR RECONSIDERATION OF A PORTION OF ORDER NO.  
PSC-03-0945-PCO-EQ**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric") hereby responds to the September 2, 2003 Motion filed by Cargill Fertilizer, Inc. ("Cargill"), seeking reconsideration of the Commission's determination in Order No. PSC-03-0945-PCO-EQ that Cargill, as the moving party in this proceeding, bears the burden of proof. As discussed in more detail below, Cargill has mistakenly equated Tampa Electric's obligation to provide information in the context of discovery with an assumption by Tampa Electric of the burden of proof in this proceeding. In this proceeding Cargill, not Tampa Electric, is asking the Commission to implement self-service wheeling on a permanent basis. The assertion inherent in Cargill's motion that the burden of proof shifts from Cargill to Tampa Electric simply because Tampa Electric may possess information that Cargill asserts is necessary in order for Cargill justify its request for relief is patently absurd. The absurdity of this position is underscored by the fact that Cargill has availed itself of the discovery process in this proceeding to obtain much, if not all, of the essential information that it claims to be in Tampa Electric's sole possession. Having obtained whatever information is available through the discovery

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process, it is Cargill's obligation, as the moving party, to marshal the facts to the best of its ability in order to justify its request for relief. In support thereof, Tampa Electric says:

1. The gravamen of Cargill's motion is that the Commission has committed an error of law in failing to recognize that, as a matter of Florida Law, Cargill's request for self-service wheeling creates a "prima facie entitlement" to such service unless Tampa Electric can demonstrate that the provision of the service would have a significant adverse impact on ratepayers. Cargill further alleges that the relevant statutory law cannot be reasonably interpreted otherwise since Tampa Electric is in possession of all the information needed to shed light on the question of adverse ratepayer impacts. The fallacy of these arguments is both obvious and profound.
2. Cargill's suggestion that its burden in this proceeding is merely to request self-service wheeling betrays a significant misunderstanding of the relevant statutes. Section 366.051, Florida Statutes, which Cargill asserts in its Motion to be the governing law, reads as follows:

*Public utilities shall provide transmission or distribution service to enable a retail customer to transmit electrical power generated by the customer at one location to the customer's facilities at another location, if the Commission finds the provision of this service, and the charges, terms and other conditions associated with the provision of this service, are not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers.*

3. Cargill's assertions to the contrary notwithstanding, Section 366.051 does not provide a basis for a claim of prima facie entitlement to self-service wheeling merely as the result of a request for such service. To the contrary, the statute makes it abundantly clear that entitlement to self-service wheeling is created only

if and when the Commission determines that the provision of such service is not likely to result in higher cost electric service to the utility's general body of retail and wholesale customers or adversely affect the adequacy or reliability of electric service to all customers. It is equally clear that the above-mentioned statutory provision does not purport to assign the burden of proof, as Cargill suggests. The Statute merely specifies the burden that must be met by the proponent of self-service wheeling. Cargill's use of the decision in *Heim v. Heim* to support its alternative interpretation of the above-mentioned statute is seriously misleading since the court in the *Heim* Case considered a statute that expressly created a presumption that property held by the parties as tenants by the entirety was a marital asset, and expressly placed the burden of proof on any party making a claim to the contrary.

4. Cargill's contention that the burden of proof ruling in Order No. PSC-03-0945-PCO-EQ is inconsistent with the Prehearing Officer's ruling in Order No. PSC-03-0866-PCO-EQ, which compelled Tampa Electric to respond to Cargill Interrogatory No. 18 is simply incorrect. The Prehearing Officer's determination that Tampa Electric had to respond to Interrogatory No. 18 did not turn on the question of whether or not Tampa Electric had the burden of proof in this proceeding. Instead, the Prehearing Officer determined that Tampa Electric was required to provide the requested information, independent of which party had the burden of proof, since the information was necessary in order for the Commission to evaluate the cost impact on ratepayers of Cargill self-service wheeling. A requirement that Tampa Electric provide necessary information in the discovery

process does not suggest an obligation on Tampa Electric's part to justify Cargill's request for relief.

5. Tampa Electric has provided the quarterly cost/benefit analyses associated with the two-year Cargill self-service wheeling experiment authorized by the Commission in Order No. PSC-00-1596-TRF-EQ. A copy of these analyses has already been provided to Cargill. Tampa Electric has already responded to two rounds of Cargill discovery requests and is in the process of responding to a third round of requests. Under these circumstances, Cargill's suggestion that it cannot sustain its burden of proof because the information that it needs is in Tampa Electric's sole possession does not ring true. Tampa Electric respectfully suggests that Cargill's apparent inability to justify the relief that it has requested is a function of a lack of merit rather than a lack of information.

WHEREFORE, Tampa Electric respectfully requests that Cargill's Motion for Reconsideration of Order No. PSC-03-0945-PCO-EQ be denied.

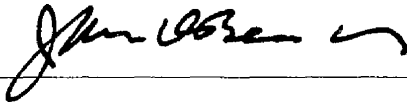
DATED this 4<sup>th</sup> day of September 2003.

Respectfully submitted,

HARRY W. LONG, JR.  
Assistant General Counsel  
Tampa Electric Company  
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Tampa, Florida 33601  
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And

LEE L. WILLIS  
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By:  \_\_\_\_\_

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been served by hand delivery (\*) or U. S. Mail on this 4th day of September, 2003 to the following:

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

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\_\_\_\_\_  
ATTORNEY