

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P O BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

October 13, 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

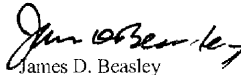
Dear Ms. Bayo,

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


James D. Beasley

JDB/pp
Enclosure

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

COMM. NO. NUMBER DATE

09987 OCT 13 8

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-E1
FILED: October 13, 2003

**RESPONSE OF TAMPA ELECTRIC COMPANY TO THE CITY OF BARTOW'S
AMENDED 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 Amended Motion to Compel Responses to Discovery Requests and Motion For Sanctions ("Amended Motion") that was filed with the Commission in this proceeding on October 2, 2003 on behalf of the City of Bartow ("Bartow" or the "City"). As discussed in more detail below, Bartow's Amended Motion is simply a reiteration of the Motion To Compel ("Original Motion") filed by Bartow in this docket on February 7, 2003. As was the case with its original motion, Bartow's Amended Motion is completely unsupported and devoid of merit. Bartow's renewed 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. As noted above, the Amended Motion reiterates the same unfounded assertions that were advanced in Bartow's Original Motion. In response, Tampa Electric hereby incorporates by reference its February 17, 2003 Answer to the Original Motion. Tampa Electric noted in its response that it had suspended all discovery activities when the Commission, at Bartow's request and over Tampa Electric's objection, had suspended all activity in the docket. A copy of this response is attached hereto as Exhibit A.
2. On May 22, 2003, the Commission Staff recommended to the Commission that Bartow's petition be denied without evidentiary hearings based on the evidence obtained through the discovery process. In the absence of a

procedural schedule calling for hearings, there was no need, procedurally, for Tampa Electric to provide objections and responses to Bartow's outstanding discovery requests.

3. On June 23, 2003, the Commission issued Order No PSC-03-0739-PAA-EU ("PAA") adopting the Staff's recommendations and denying Bartow's request for relief.
4. On July 14, 2003, Bartow filed a Protest and Petition for Formal Hearing with regard to the matters decided in the PAA.
5. On July 22, 2003, Tampa Electric filed its Answer and Motion To Dismiss in response to Bartow's July 14 Protest and Petition. In its Motion to Dismiss, Tampa Electric urged the Commission to deny Bartow's request for a hearing due to Bartow's failure to articulate material facts that warrant reversal or modification of the PAA and for failure to identify specific statutes or rules that require reversal or modification of the PAA, all as required pursuant to Rule 28-106.201, F.A.C.
6. Tampa Electric respectfully submits that until the Commission determines whether a hearing will be held in response to Tampa Electric's pending Motion to Dismiss, there is no legitimate procedural basis for discovery activity in this docket to be resumed. 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.
7. 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.

WHEREFORE, Tampa Electric respectfully requests that the Original Motion and the Amended Motion be denied.

DATED this 13th day of October, 2003.

Respectfully Submitted,

HARRY W. LONG, JR.
Assistant General Counsel
Tampa Electric Company
Post Office Box 111
Tampa, Florida 33601
(813) 228-1702

and



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
(850) 224-9115

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 furnished by U. S. Mail or hand delivery (*) on this 13th day of October 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. Joseph J. DeLegge
City of Bartow
P. O. Box 1069
Bartow, FL 33830-1069

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



ATTORNEY