

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

December 23, 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: Request for Declaratory Statement from Tampa Electric Company Regarding
Territorial Dispute with City of Bartow in Polk County;
FPSC Docket No. 031017-EI

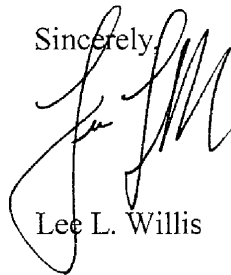
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Supplement to Petition for Declaratory Statement.

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
Enclosure

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

13453 02000
PUBLIC-UTILITY COMMISSION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Declaratory Statement of) DOCKET NO. 031017-EI
Tampa Electric Company Regarding Territorial) FILED: December 23, 2003
Dispute with City of Bartow in Polk County.)
_____)

**SUPPLEMENT TO PETITION FOR DECLARATORY STATEMENT
OF TAMPA ELECTRIC COMPANY**

Pursuant to Section 120.565, Florida Statutes and Rules 28-105.001 and 28-105.002 and 28-105.003, F.A.C, Tampa Electric Company (“Tampa Electric” or the “Company”) hereby supplements its October 8, 2003 request that the Commission issue a declaratory statement defining the rights and obligations of Tampa Electric under that certain service territory agreement between the City of Bartow (“City” or “Bartow”) and Tampa Electric (the “Service Territory Agreement”) approved by the Commission and embodied in Order No. 15437 (the “Order”), issued in Docket No. 850148-EU on December 11, 1985. As explained in more detail below, Bartow’s recent motion to dismiss its Petition for modification of the Order in Docket No. 011333-EI in no way diminishes the need for a clear interpretation of the Order by the Commission, as requested by Tampa Electric in this Docket. The parties clearly disagree as to the proper interpretation of the Order and the Commission’s failure to resolve this disagreement now may well result in the uneconomic duplication of electric distribution facilities in Tampa Electric’s service territory. In support whereof, Tampa Electric says:

1. In its October 8, 2003, Petition, Tampa Electric requested an order declaring that, pursuant to Order No. 15437: 1) the Service Territory Agreement is valid and binding upon Tampa Electric and Bartow; 2) Tampa Electric has the exclusive right and obligation under the Service Territory Agreement to provide end use electric service to fire stations, police stations, sewer lift stations, street lights or other non-electric utility facilities owned and/or operated by Bartow and located within Tampa Electric's service territory; and 3) any attempt by Bartow to self-provide end use electric service to such facilities in Tampa Electric's service territory, without prior Commission approval, would constitute a violation of the Service Territory Agreement and Order No. 15437.
2. In Response to Tampa Electric's Petition, on October 20, 2003, Bartow filed its Motion to Dismiss and Memorandum of Law In Docket No. 011333-EU, the Docket in which Tampa Electric's Petition For Declaratory Statement was originally filed.
3. On October 28, 2003, Tampa Electric's Petition was separated out of Docket No. 011333-EU and placed in the current docket.
4. On October 29, 2003, Tampa Electric responded in this docket to Bartow's Motion to Abate and Memorandum of Law.
5. The stated need for the requested declaratory statement was based on Bartow's statement at Paragraph 16 of its Petition and in various other pleadings in Docket No. 011333-EU, that:

The city of Bartow will own and operate certain of its own facilities located in that portion of the development lying north of its territorial boundary line, including a fire station, auxiliary police station, sewer lift stations, and street lights, all of which it will serve with its electrical power.

6. As Tampa Electric pointed out in its Petition, the question of whether Bartow is authorized to provide end use electric service to city-owned, non-electric utility facilities located in Tampa Electric's service territory was not at issue in Docket No. 011333-EU. Bartow merely asserted the right to provide such service in that docket but did not ask the Commission to modify the Service Territory Agreement to permit such extra-territorial electric service. In effect, Bartow asserted the right to serve City-owned facilities in Tampa Electric's service territory even if its request to move the service territory boundary to include the entire OFP development was denied by the Commission. Any doubt as to Bartow's intent in this regard was conclusively put to rest in its December 1, 2003 response to Tampa Electric's Petition for Declaratory Statement.

7. At Paragraph 29 of its response, Bartow asserts:

What TECO failed to mention is that the [service territory] agreement between TECO and Bartow, which was approved by the Commission, does not address the issue of whether Bartow can serve its city-owned facilities located within its city boundary. One of the reasons that it does not address that issue is that Bartow's position is that it has the inherent right to serve its own city-owned facilities. Furthermore, at the time of the agreement, the OFP property was not within the City limits of Bartow.

8. In no uncertain terms, Bartow is directly challenging the exclusive authority of this Commission under Sections 366.04(2)(d) and 366.04(2)(e), Florida Statutes, to establish and enforce service territory boundaries where a municipal utility is concerned. Not surprisingly,

Bartow offers no legal authority for its assertion. Nonetheless, this assertion brings into dramatic relief the compelling need for Commission clarification of the Order.

9. Bartow further asserts at Paragraphs 30 and 31 of its response that since the Order does not specifically prohibit Bartow from serving city-owned facilities in Tampa Electric's service territory and, in that limited sense, is silent on the matter, "there can be no interpretation of the agreement on that subject" pursuant to Rule 28-105, F.A.C. This reasoning is both circular and obtuse. First, if the Order explicitly gave Bartow the right to serve city-owned facilities in Tampa Electric's service territory, then there would be no need for declaratory relief. Second, the Order is not silent with regard to the rights of Tampa Electric and Bartow to serve their own facilities located in the other party's service territory. As Tampa Electric pointed out in its Petition, Bartow has already acknowledged that most territorial agreements have a clause in them that specifically states that the parties to those agreements reserve the right to service their own facilities located outside of the territorial boundaries.
10. The Tampa Electric/Bartow Service Territory Agreement, as embodied in the Order, is quite specific as to the rights reserved by the parties to serve their own facilities located in the service territory of the other party. City-owned facilities such as police stations, fire stations, lift stations and streetlights are not among the categories of facilities listed. As Bartow itself recognizes, if the Commission had intended to authorize Bartow to

serve these kinds of City-owned facilities in Tampa Electric's service territory, then that reservation of authority would have been explicitly stated.

11. At Paragraph 27 of its Response, Bartow asserts that Tampa Electric's request for declaratory relief is inappropriate under Rule 28-105.001, F.A.C. since, in Bartow's opinion, the request seeks an order determining the conduct of another (presumably Bartow) and seeks "a statement of general policy that will be applicable to all municipally-owned electrical systems under similar circumstances". However, these assertions are demonstrably groundless. As re-iterated in Paragraph 1 above, Tampa Electric has requested an order clarifying Tampa Electric's rights and obligations under the Order. The requested relief would not direct Bartow to take or refrain from taking any action. Since the requested relief pertains only to Tampa Electric's rights and obligations under the Order, which, in turn, pertains only to Tampa Electric's unique service territory agreement with Bartow, it is difficult, if not impossible, to understand Bartow's assertion that Tampa Electric has requested a general policy statement applicable to all municipal utilities.
12. On December 2, 2003, Bartow filed a one sentence Notice of Voluntary Dismissal Without Prejudice of its Petition in Docket No. 011333-EU. At the time, Bartow offered no explanation for its decision to withdraw its request for relief.

13. Subsequently, on December 18, 2003, Bartow filed an Amended Motion To Dismiss or Abate and Memorandum of Law. In this pleading, Bartow explained that the Southwest Florida Water Management District (“SWFMUD”) had purchased the Old Florida Plantation Property. Bartow further suggested that in light of the SWFMUD purchase, there were no current plans for the development of the OFP property, rendering Bartow’s petition moot for the present.
14. Bartow further alleged in its Amended Motion, that the Purchase by SWFMUD and the resulting withdrawal of Bartow’s petition rendered Tampa Electric’s Petition for Declaratory Statement in this docket moot since Bartow allegedly now has no current plans to construct and provide electric service to City-owned facilities in Tampa Electric’s service territory. However, as explained below, Bartow’s pleading is misleading in that Bartow has not repudiated its assertion of entitlement to serve City-owned facilities in Tampa Electric’s service territory and residential/commercial development of a significant portion of the OFP property is likely to occur, despite the SWFMUD purchase.
15. According to an article in the November 1, 2003 local edition of The Ledger, SWFMUD officials stated that the agency intended to sell back to developers as much as 1200 acres of the OFP property for residential development. In fact, the sale price for the OFP property purchased by SWFMUD was negotiated based on the value of the anticipated residential

development, not the value of the land. Copies of the relevant newspaper articles are attached as Exhibit A hereto.

16. In light of the anticipated residential development of the OFP property, it is clear that Bartow's motive to construct and serve city-owned facilities in Tampa Electric's service territory has not been eliminated. Instead, the timing of such activity has changed. Bartow's assertion in its Amended Motion that it has no current plans to construct and provide electric service to city-owned facilities in Tampa Electric's service territory is disingenuous and misleading.
17. Given Bartow's continued assertion of entitlement to serve such city-owned facilities in Tampa Electric's service territory without prior Commission review and approval, the declaratory relief requested by Tampa Electric in its Petition remains essential to avoid uneconomic duplication of distribution facilities in Tampa Electric's service territory.
18. As explained in Tampa Electric's March 28, 2003 letter to Staff Attorney Vining in Docket No. 011333-EU, Bartow has already demonstrated a propensity to engage in uneconomic duplication of facilities. As discussed in Tampa Electric's March 20, 2003 response to Staff Data Request No. 1 in Docket No. 011333-EU, the total OFP load at full build out was estimated to be 30 MVA. Of that total, less than 6 MVA was estimated to reside within Bartow's current service territory at full build out. However, Bartow reported in response to Staff's February 17, 2003 Data Request No. 5 that Bartow had spent over \$2 million since 1996 for substation

expansion in the area of the OFP property, resulting in excess transformer capacity of over 84 MVA. Excess capacity of this magnitude could only have been installed in anticipation of substantial load and/or service territory expansion, possibly including the OFP load with Tampa Electric's current service territory boundary. This is precisely the kind of uneconomic duplication of facilities that the Order was intended to avoid.

19. In light of the above discussion, it is clear that Bartow and Tampa Electric have a current and on-going disagreement with regard to the proper interpretation of the Order. Bartow has unambiguously asserted the right to serve city-owned facilities in Tampa Electric's service territory without prior Commission approval. With the anticipated resumption of plans for residential and commercial development of a significant portion of the OFP property, Bartow will have the financial motive and opportunity to act on its asserted right unless Tampa Electric's rights and obligations under the Order are clarified.

WHEREFORE, Tampa Electric respectfully requests that the Commission issue an order denying Bartow's Motion to Dismiss or Abate and declaring that:

1. The Service Territory Agreement is valid and binding upon Tampa Electric and Bartow;
2. Tampa Electric has the exclusive right and obligation under the Service Territory Agreement to provide end use electric service to fire stations, police stations, sewer lift stations, street lights or other non-electric utility

facilities owned and/or operated by Bartow and located within Tampa Electric's service territory; and

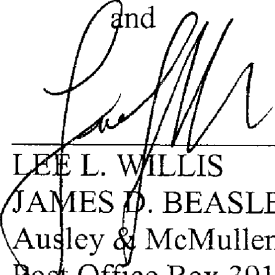
3. Any attempt by Bartow to self-provide electric service to such facilities in Tampa Electric's service territory, without prior Commission approval, would constitute a violation of the Service Territory Agreement and Order No. 15437.

DATED this 23rd day of December 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

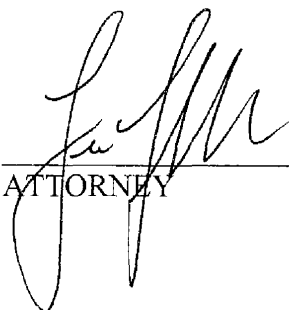
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Supplement to Petition for Declaratory Statement, has been furnished by U. S. Mail or hand delivery (*) on this 23rd day of December 2003 to the following:

Ms. Marlene Stern*
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



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Published Saturday, November 22, 2003

LAKELAND

Swiftmud Buys Old Florida Plantation

Southwest Florida Water Management District officials Friday completed the \$30.5 million purchase of the Old Florida Plantation property on Lake Hancock.

Swiftmud's Governing Board last month gave the staff the go-ahead to pursue the purchase of the 3,535-acre tract.

Old Florida Plantation developers bought the property for \$1.57 million in 1990 with plans to create a sprawling community, including two golf courses, nearly 5,000 homes and a commercial center.

The property now will be used to build treatment marshes to clean up water flowing from Lake Hancock into Saddle Creek toward the Peace River to improve water quality in the river. In addition, purchase of the tract figures into the agency's plans to raise the lake's level to store water to replenish the river during dry periods.

Swiftmud officials plan to sell any property not needed for the project.

Exhibit A



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Published Saturday, November 1, 2003

Water Officials OK Land Purchase Old Florida Plantation was to be huge development.

By [Suzie Schottelkotte](#)
The Ledger

BARTOW – Regional water officials have approved the purchase of the 3,535-acre Old Florida Plantation site in Bartow, paving the way to close on the sale by the end of the year.

The Southwest Florida Water Management District will pay \$30.5 million for the site, with plans to incorporate a portion of that land into the mitigation effort for Lake Hancock.

The water district will eventually resell as much as 1,200 acres that won't be needed for its project.

The OFP site skirts the lake's southeast shoreline. Right now, the land is vacant except for a few cattle.

The sale price, officials said, was based on the value of the development, not the value of the barren land.

At one time, much of the land had been mined for phosphate and parts of it have been reclaimed.

Old Florida Plantation developers bought the property for \$1.57 million in 1990 with plans to create a sprawling community, including two golf courses, nearly 5,000 homes and a commercial center.

The OFP partners drafted a development plan for the site, outlining locations for the residential communities.

When submitting its plan for governmental approval, the developers sought to reserve enough capacity in Bartow's water and sewer systems to accommodate the development's future residents.

Developers also set aside enough road capacity to handle the residential traffic coming to and from Old Florida Plantation as the community was built.

Those approvals, called entitlements, will carry over to Swiftmud with the purchase, said Michael Molligan, spokesman for the state water management agency.

They also make the land more valuable. At some point in the future, Swiftmud plans to sell as much as 1,200 acres that can be developed into residential communities.

That acreage won't be needed for the Lake Hancock mitigation.

Prospective developers who buy that excess land will buy the existing entitlements and won't have to repeat OFP's approval process.

That's why Swiftmud and OFP partners agreed to negotiate a sale based on the value of the development, not the value of the land.

Water Officials OK Land Purchase

By Suzie Schottelkotte
The Ledger
suzbiz@yahoo.com

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That's why Swiftmud and OFP partners agreed to negotiate a sale based on the value of the development, not the value of the land.

"Our approach was based on the fact that a development order exists," Molligan said.

According to Swiftmud's Web site, two appraisals for the site were \$28 million to \$31.2 million. A third appraisal, paid for by the owners, estimated the value at \$32.2 million.

Lakeland lawyer Greg Deal, who represented Old Florida Plantation, confirmed that the negotiations were based on the development's potential value.

Lou Roeder, Old Florida Plantation's managing partner, said the land Swiftmud needed would have taken the proposed development's golf course site, which would have precluded developers from building the kind of community they envisioned.

Recognizing that Swiftmud had the authority to take the land through eminent domain, OFP agreed to negotiate the sale of the entire site