

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa Electric Company.

DOCKET NO. 080317-EI

DATED: January 15, 2009

CITIZENS RESPONSE TO TAMPA ELECTRIC'S CROSS-MOTION TO STRIKE

The Citizens of the State of Florida (Citizens) hereby file their Response to Tampa Electric Company's (Tampa Electric) Cross-Motion to Strike portions of the testimony of Dr. J. Randall Woolridge, and as grounds state the following:

1. On January 14, 2009, Tampa Electric filed a Cross-Motion to Strike portions of Dr. Woolridge's pre-filed direct testimony. Tampa Electric argues that if portions of their witnesses' Susan Abbott and Gordon Gillette pre-filed testimonies are stricken on the grounds that they are inadmissible hearsay so should Dr. Woolridge's pre-filed testimony.

2. Section 90.704, Florida Statute, states "[t]he facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence." The 3rd DCA noted in *Flores v. Miami-Dade County*, 787 So. 2d 955, 959 (Fla. 3rd DCA 2001), that "[e]xperts may rely upon hearsay in forming their opinions if that kind of hearsay is relied upon during the practice of the experts themselves when not in court." Further, Section 90.803(17), Florida Statutes, entitled Market Reports, Commercial Publications states that "[m]arket quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by

the public or by persons in particular occupations if, in the opinion of the court, the sources of information and method of preparation were such as to justify their admissions.” Further, the 2nd DCA stated in *Brim v. State*, 779 So. 2d 427, 448(2nd DCA 2000), “[t]he expert may base his or her opinion on personal knowledge and on a review of the literature upon which such experts regularly rely.”

3. Dr. Woolridge’s testimony is expert testimony on the appropriate cost of capital and capital structure. As such, the pre-filed testimony sets forth the facts and data on which Dr. Woolridge relied to support his opinion. All of the portions of Dr. Woolridge’s pre-filed testimony identified by Tampa Electric in its Cross-Motion are the facts and data on which Dr. Woolridge relied to support his opinion and is therefore not hearsay. Moreover, some of the information in Dr. Woolridge’s pre-filed testimony identified by Tampa Electric as inadmissible hearsay relates to market reports and commercial publications which are relied upon by the public and/or professionals in the field and is therefore admissible evidence.

WHEREFORE, the Citizens request the Commission hereby deny Tampa Electric’s Cross-Motion to Strike portions of Dr. Woolridge’s pre-filed testimony.

Respectfully Submitted,

J.R. Kelly
Public Counsel


Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789

Tallahassee, Florida 32399-1400
(850) 488-9330
Fax: (850) 488-4491

Attorneys for the Citizens
Of the State of Florida

CERTIFICATE OF SERVICE
DOCKET NO. 080317-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail, and U.S. Mail to the following parties on this 15th day of January, 2009.

James Beasley/Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Jean Hartman/Jennifer Brubaker
Keino Young/ Martha Brown
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Vicki Kaufman/Jon Moyle
Florida Industrial Power Users Group
Anchors Law Firm
118 N. Gadsden Street
Tallahassee, FL 32301

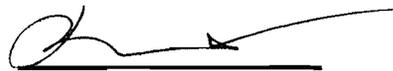
R. Scheffel Wright
Young Law Firm
225 S. Adams Street, Ste. 200
Tallahassee, FL 32308

Paula Brown
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602

Michael B. Twomey
P.O. Box 5256
Tallahassee, FL 32314-5256

Cecilia Bradley
Office of the Attorney General
The Capitol – PL 01
Tallahassee, FL 32399-1050

John W. McWhirter, Jr.
McWhirter, Reeves & Davidson, P.A.
P.O. Box 3350
Tampa, FL 33601-3350



Patricia A. Christensen
Associate Public Counsel