

# AUSLEY & MCMULLEN

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March 20, 2009

HAND DELIVERED

RECEIVED-FPSC  
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COMMISSION  
CLERK

Ms. Ann Cole, Director  
Division of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Complaint of Terence K. Wolfe against Tampa Electric Company for alleged improper billing; FPSC Docket No. 080435-EI

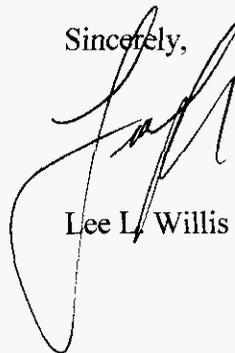
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Stay Proceeding.

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

COM \_\_\_\_\_ LLW/pp  
ECR \_\_\_\_\_ Enclosure  
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cc: Mr. Terence K. Wolfe (w/enc.)  
Mr. Keino Young (w/enc.)

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Terence K. Wolfe )  
against Tampa Electric Company for )  
alleged improper billing. )  
\_\_\_\_\_ )

DOCKET NO. 080435-EI

FILED: March 20, 2009

**TAMPA ELECTRIC COMPANY'S  
MOTION TO STAY PROCEEDING**

Tampa Electric Company ("Tampa Electric" or "the company") moves the Commission to stay this proceeding pending the outcome of a civil lawsuit that the Complainant in this proceeding, Mr. Terence K. Wolfe, filed on March 17, 2009 in the Circuit Court for Hillsborough County, Florida<sup>1</sup> and, as grounds therefor, says:

1. On July 3, 2008 Mr. Wolfe filed a Complaint against Tampa Electric in this proceeding concerning electric service provided to him at his residence at 406 South Bryan Circle, Brandon, Florida 32511. On July 28, 2008 Tampa Electric filed its Answer and Affirmative Defenses to Mr. Wolfe's Commission Complaint.

2. On March 17, 2009, notwithstanding the pendency of his complaint proceeding before this Commission, Mr. Wolfe filed a Complaint against Tampa Electric in the Circuit Court for Hillsborough County, Florida, Civil Division. As of the date of this Motion, Tampa Electric has yet to be served with Mr. Wolfe's Complaint in Circuit Court.

3. In both the Circuit Court Complaint and the Complaint filed with this Commission, Mr. Wolfe essentially claims that his electric service was wrongfully terminated by Tampa Electric. Tampa Electric has denied any wrongdoing in response to Mr. Wolfe's

<sup>1</sup> Terence K. Wolfe v. Tampa Electric Company, Case No. 09-CA-6748, DIV. J

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Complaint to the Commission and will, likewise, deny any wrongdoing in its response to Mr. Wolfe's Complaint in Circuit Court.

4. In the Circuit Court action, unlike in the complaint proceeding he filed with this Commission, Mr. Wolfe seeks compensatory and other alleged damages, including reimbursement for attorney's fees and costs.

5. In view of the fact that Mr. Wolfe has elected to commence a lawsuit against Tampa Electric addressing essentially the same allegations as set out in his pending Complaint before this Commission, there are several key considerations supporting the entry of a Commission order staying the Commission complaint proceeding pending final disposition of Mr. Wolfe's action in Circuit Court.

6. First of all, Mr. Wolfe's demand for relief in the form of compensatory and other damages and attorney's fees and costs can only be addressed and resolved in the Circuit Court action. This Commission is not authorized to render judicial judgments or decrees or to award damages. State v. Southern Tel. and Const. Co., 65 Fla. 270, 61 So. 506 (1913); Mobile America Corp., Inc. v. Southern Bell Tel. and Tel. Co., 282 So.2d 181 (Fla. 1<sup>st</sup> DCA 1973; Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, Inc., 291 So.2d 199 (Fla. 1974).

7. Mr. Wolfe, having opted to seek damages in a court of law, should not be heard to simultaneously pursue the same issues in an administrative proceeding in which damages may not be awarded.

8. Governmental efficiency including conserving the labors of the Commission and its Staff and avoiding duplicate litigation efforts on the part of the parties would be best served by staying Mr. Wolfe's complaint proceeding before the Commission pending the outcome of the

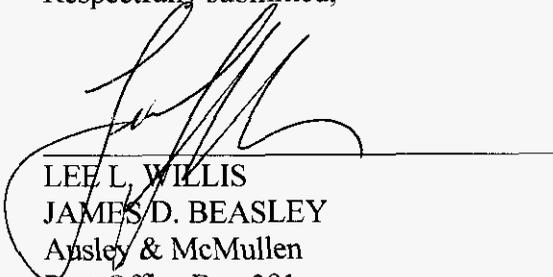
civil action he has filed in Circuit Court. Depending upon how Mr. Wolfe's civil action is resolved, the issues raised in his Commission proceeding may be fully resolved in the court proceeding and, therefore, may not need to be addressed in the Commission proceeding.

9. Staying the Commission proceeding will impose no undue burden, prejudice or disadvantage upon Mr. Wolfe, especially in light of his election to go forward with an action in Circuit Court for damages.

WHEREFORE, Tampa Electric Company urges the Commission to stay this proceeding pending final disposition of the Circuit Court action filed by Mr. Wolfe in the Hillsborough County Circuit Court on March 17, 2009.

DATED this 20<sup>th</sup> day of March 2009.

Respectfully submitted,



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Ansley & McMullen  
Post Office Box 391  
Tallahassee, Florida 32302  
(850) 224-9115

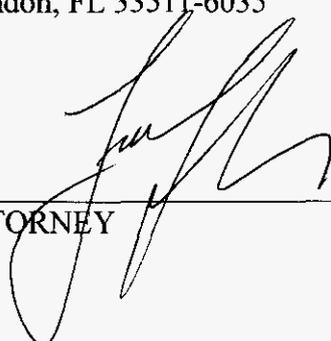
ATTORNEYS FOR TAMPA ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Stay Proceeding, filed on behalf of Tampa Electric Company, has been served by U. S. Mail or hand delivery (\*) on this 2<sup>nd</sup> day of March 2009, to the following:

Mr. Keino Young\*  
Office of General Counsel  
Florida Public Service Commission  
Room 370Q – Gerald L. Gunter Bldg.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. Terence K. Wolfe  
406 S. Bryan Circle  
Brandon, FL 33511-6035

  
\_\_\_\_\_  
ATTORNEY