

**IN THE FLORIDA PUBLIC SERVICE COMMISSION**

Re: Docket No. 080435-EI - Complaint of Terence K. Wolfe against Tampa Electric Company for alleged improper billing and improper termination of residential electrical service.

**TERENCE WOLFE'S MEMORANDUM IN OPPOSITION TO  
MOTION TO STAY PROCEEDING**

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Mr. Wolfe opposes the motion of Tampa Electric Company ("TECO") to stay this proceeding, on the following grounds:

1) TECO fails to cite a single Florida Public Service commission ("FPSC") rule, Florida statute, or case that provides that the FPSC has the legal authority indefinitely to "stay" its own proceeding, merely because a suit for civil damages has been filed against TECO by a Complainant to the FPSC. Accordingly, no legal authority to stay having been identified, TECO's motion must be denied.

2) Even in if the FPSC might be considered to possess some kind of "inherent authority" by which it might stay its proceedings on motion of a regulated utility, TECO fails to make any convincing argument that such inherent authority should be exercised to grant it the relief it seeks. TECO fails to identify a single FPSC rule, Florida statute, or case that provides that the FPSC ought to stay its proceedings indefinitely merely because a civil lawsuit has been filed against TECO articulating counts for breach of contract, wrongful interruption of electrical service, and violations of the Florida Consumer Collection Practices Act. As TECO undoubtedly will concede, these causes of action have nothing to do with the FPSC, as the FPSC can grant no relief for any of them. TECO, indeed, makes no coherent argument at all in support of its request for a stay. TECO asserts in a conclusory fashion that because the FPSC has no jurisdiction to enter a judgment for money damages, that that uncontroversial observation justifies a stay of the FPSC's proceedings. TECO

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does not explain the basis for this belief, and there is, in fact, none. Accordingly, TECO's motion should be denied.

3) The FPSC is an arm of the legislative branch. Florida Statutes, § 350.001 (2008). It has an obligation to perform its duties independently. *Id.* For the FPSC indefinitely to stay this proceeding, which it likely has no authority to do in any event, would certainly be an abnegation of its duty to act independently, and would work harm upon Mr. Wolfe. Mr. Wolfe, like all consumer complainants to the FPSC, has the right to a speedy, timely, and correct resolution by the FPSC of complaints made to it concerning the unlawful behavior of regulated utilities like TECO. *See* Florida Statutes § 366.03. The public at large also has an interest in seeing this controversy finally adjudicated, and it would work grievous injury both to Mr. Wolfe's interests, and to the reputation of the FPSC, were the FPSC to undermine its own jurisdiction merely because TECO has required that Mr. Wolfe invoke his right in another forum to seek money damages of TECO for its wrongful behavior.

4) TECO notes that it has not been served with a copy of the complaint on which it bases its request for a stay of the FPSC proceeding. Indeed, TECO has refused to waive service of process as provided under the Florida Rules of Civil Procedure, and its strategy may be to evade service of process as long as it can, or until the time for serving it has expired, in which case there may be no judicial proceeding against it. To stay this action where TECO has not even been served in a proceeding which it claims is the basis for its motion would be premature, and the motion should thus be denied.

5) Moreover, TECO asserts in a conclusory fashion that the issues to be adjudicated by the FPSC and the Circuit Court for Hillsborough County are "the same," but this is false. As TECO

has admitted, it is not the FPSC's province to adjudicate Mr. Wolfe's claims of damages or to award relief therefore. The FPSC's jurisdiction to regulate utilities such as TECO has nothing to do with actions for damages against them. If there is an argument to be made that the FPSC is divested of jurisdiction over a regulated utility merely because a Floridian has been injured by TECO's wrongful conduct, TECO's filing here is not it.

6) Furthermore, TECO should not be heard on its concerns about "governmental efficiency," as these fairly shock the conscience. It is TECO's wrongful conduct that has caused the consumption of FPSC time and resources to date, not to mention those of Mr. Wolfe, and now will consume judicial time and resources, as well. If TECO truly were concerned about "governmental efficiency," it would not have committed the wrongful acts it did in the first instance and, having done so, it would have satisfactorily resolved the matter by now, as it has been given the opportunity to do. Additionally, the FPSC has had this matter before it for over a year, and it would be ridiculous at this point to enter any kind of stay for TECO's benefit, after the amount of staff time and effort invested in this proceeding, not to mention the time and energy required of the parties before the FPSC to date. To the contrary, as TECO admits, what is now going to occur before the Court in Hillsborough County has nothing whatever to do with the FPSC's jurisdiction, which is concerned not with providing relief in the form of damages to Mr. Wolfe, but with determining whether TECO violated one or more FPSC rules or laws it is the FPSC's duty to enforce, and, if so, imposing appropriate discipline and corrective measures upon TECO. Accordingly, the motion should be denied.

7) Just as TECO is asking the FPSC to stay its proceeding, on the basis of the existence of a judicial proceeding, TECO undoubtedly, in the event it gets served, will be asking the Circuit

Court for Hillsborough County for a stay, on the grounds that there is an administrative complaint pending against it before the FPSC on the same factual grounds as are alleged in the lawsuit. TECO's strategy, therefore, will be to try and have both proceedings against it stayed, indefinitely, using each proceeding as justification for the staying of the other! This is a clever strategy but, again, one without any legal justification. Accordingly, TECO's motion should be denied.

8) There is no conflict between the simultaneous exercise of jurisdiction by the FPSC and the Circuit Court for Hillsborough County. There is no possibility that either tribunal would enter an order that would be in conflict with an order of the other. Therefore, TECO's motion for a stay must be denied.

WHEREFORE, no proper basis for a stay having been shown by TECO, the motion should be denied.

/s Terence K. Wolfe

April 2, 2009