

# AUSLEY & MCMULLEN

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March 6, 2012

HAND DELIVERED

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

RECEIVED FPSC  
12 MAR - 6 AM 10:56  
COMMISSION  
CLERK

Re: Edward McDonald v. Tampa Electric Company  
FPSC Docket No. 110305-EI

Dear Ms. Cole:

Enclosed for filing in the above docket are the original and seven (7) copies of Tampa Electric Company's Motion to Dismiss Petition.

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: Mr. Edward McDonald (w/enc.)  
Ms. Pauline Robinson (w/enc.)

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DOCUMENT NUMBER-DATE

01305 MAR-6 2012

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

EDWARD MCDONALD, )  
)  
Petitioner, )  
)  
v. )  
)  
TAMPA ELECTRIC COMPANY, )  
)  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO. 110305-EI

FILED: March 6, 2012

**TAMPA ELECTRIC COMPANY'S  
MOTION TO DISMISS PETITION**

Tampa Electric Company ("Tampa Electric" or "the company") moves the Commission to enter an order dismissing the Petition submitted by Mr. Edward McDonald in the above matter and, as grounds therefor, states:

1. Mr. McDonald's Petition addresses two amounts in controversy. The first amount is \$915.94 which Mr. McDonald claims is barred by the statute of limitations and which he also claims has been paid. The second amount is \$3,500.00, which amount Mr. McDonald has acknowledged was returned by Tampa Electric to Bank of America. Both claims have been fully investigated and addressed in detail by the Commission's Staff and are fully addressed in the Commission's Proposed Agency Action Order.<sup>1</sup> Mr. McDonald's latest Petition fails to offer any new or different evidence or argument from that previously put forth. Mr. McDonald's Petition is legally deficient with respect to each amount in controversy in that it fails to state a cause of action for which relief may be granted.

<sup>1</sup> Order No. PSC-12-0053-PAA-EI, issued February 7, 2012 in Docket No. 110305-EI ("the Commission's PAA Order").

DOCUMENT NUMBER DATE

: 01305 MAR-6 2012

FPSC-COMMISSION CLERK

**As to the \$915.94 Amount**

2. Petitioner claims this amount is barred by the statute of limitations. However, the limitations set forth in Chapter 95, Florida Statutes, have no application to administrative proceedings. Sarasota County v. National City Bank of Cleveland, Ohio, 902 So.2d, 233 (Fla. 2<sup>nd</sup> DCA 2005). Chapter 95, Florida Statutes, by definition applies only to civil actions or proceedings. (Section 95.011, Florida Statutes). Tampa Electric has commenced no civil action or proceeding against Petitioner.

3. As to Petitioner's claim that the \$915.94 amount was transferred to Petitioner's home account and fully paid in June 2005, the Petition completely omits reference to Account No. 1501-000031-5 in the amount of \$1,095.20. Petitioner has previously claimed that payment of the \$1,095.20 satisfied Petitioner's obligation with respect to the \$915.94 balance owing on Account No. 1501-000031-4, which was an entirely separate account from the one Petitioner has indicated his wife paid in order to avoid disconnection of service. Although the two accounts were discussed in detail in the Commission's PAA Order in this proceeding, Petitioner's new Petition omits all reference to the second account, which is a material omission in the latest Petition.

**As to the \$3,500.00 Amount**

4. Petitioner has acknowledged all along that Tampa Electric returned payments made by Petitioner totaling \$3,500.00 to Bank of America at the Bank's request. Petitioner now in essence seeks damages against Tampa Electric plus interest, something the Commission is without jurisdiction to award. Moreover, Petitioner acknowledges Tampa Electric no longer possesses the \$3,500.00, having returned that amount to the Bank. If Petitioner contends he had authority to write checks on the Bank of America account, it would appear that Petitioner's

grievance is against the Bank for having directed Tampa Electric to return the \$3,500.00. Stated differently, if Petitioner, in fact, possesses authority to draw funds from his mother's account, he is free to access the \$3,500.00 by writing a check to himself. The key points are that Tampa Electric does not have possession of the \$3,500.00 in question and the Commission lacks jurisdiction to award damages.

**Petition Not Timely Filed**

5. Petitioner did not file a Petition with the Commission within the time frame provided for in the Commission's February 7, 2012 PAA Order, which was by close of business on February 28, 2012. While Petitioner emailed a Petition to the Commission, that Petition did not meet the Commission's e-filing requirements and Petitioner was furnished notice by the Commission that the document was not considered filed. Petitioner did not correct this defect and resubmit a petition meeting the Commission's e-filing requirements by close of business on February 28, 2012. According to the PAA Order, in the absence of a timely petition, that order will become final and effective upon the issuance of a consummating order.

6. Even if Mr. McDonald's attempted Petition had been validly filed by the deadline for such Petition, it should be dismissed for the other legal deficiencies set forth above.

WHEREFORE, Tampa Electric respectfully moves the Commission for entry of an order dismissing with prejudice the Petition submitted in this proceeding.

DATED this 6<sup>th</sup> day of March 2012.

Respectfully submitted,



JAMES D. BEASLEY  
J. JEFFRY WAHLEN  
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 and correct copy of the foregoing Answer to Petition, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail on this 6<sup>th</sup> day of March 2012 to the following:

Ms. Pauline Robinson\*  
Staff Counsel  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. Edward McDonald  
7203 N. 41<sup>st</sup> Street  
Tampa, FL 33604

  
\_\_\_\_\_  
ATTORNEY