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December 22, 1995

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

Re: Docket No. 951295-EU

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of the City of Tallahassee ("Tallahassee") are the following:

1. The original and fifteen copies of the City of Tallahassee's Objections to and Motion for Protective Order Directed to Petitioners' First Set of Interrogatories to City of Tallahassee; and
2. A disk in Word Perfect 6.0 containing a copy of the document entitled "object.int."

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

Bill Willingham
William B. Willingham

WBW/rl

cc: All Parties of Record

DOCUMENT NUMBER-DATE

12973 DEC 22 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Invalidate or)
Modify Territorial Agreement)
between City of Tallahassee and)
Talquin Electric Cooperative, Inc.)
by Paul A. Lehrman and Randall E.)
Denker.)

Docket No. 951295-EU

Filed: December 22, 1995

**CITY OF TALLAHASSEE'S OBJECTIONS
TO AND MOTION FOR PROTECTIVE ORDER
DIRECTED TO PETITIONERS' FIRST SET OF
INTERROGATORIES TO CITY OF TALLAHASSEE**

The City of Tallahassee ("City"), by and through its undersigned counsel, and pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, and Rules 25-22.034 and 25-22.037(2), Florida Administrative Code, hereby files its objections to the First Set of Interrogatories propounded by Petitioners Paul A. Lehrman and Randall E. Denker (the "Customers") and requests the Prehearing Officer to enter an order relieving the City from any obligation to respond to said interrogatories until such time as the Commission rules on the City's anticipated Motion to Dismiss the Petition to Invalidate or Modify Territorial Agreement ("Petition") filed by the Customers. Should the Prehearing Officer not grant such relief, the City requests the Prehearing Officer to enter an order relieving the City of any obligation to respond to the specific interrogatories identified below. In support of its objections and Motion for Protective Order, the City states as follows:

1. On or about November 1, 1995, the Customers filed their Petition.

2. On November 13, 1995, a meeting was held at the Customers' home attended by representatives of the City, Talquin

DOCUMENT NUMBER-DATE

12973 DEC 22 95

FPSC-RECORDS/REPORTING

and the Commission staff. The meeting provided an opportunity to gain further information and engage in discussion concerning the alleged reliability problems with the City's electric service, and alternatives available to improve the reliability of service provided by the City to the Customers.

3. The City desires to resolve this matter expeditiously and without formal litigation. The City's actions to date are indicative of this desire. Consistent with this desire, on November 21, 1995, the City filed a motion requesting an extension of 30 days¹ to file a pleading responsive to the Petition to allow sufficient time to complete the above-described improvements in order to achieve a cost-effective settlement of this matter. The Customers did not object to the motion. The motion remains pending. In addition, in order to facilitate settlement, the City expended substantial time and resources to provide an expedited, detailed response to the staff's Interrogatory No. 1, which requested detailed outage and reliability data for facilities located within five miles of the Customers' home.

4. On December 5, 1995, the City began reconductoring the primary circuit that serves the Customers. The City anticipates that the reconductoring will be completed on or before January 15, 1996. The City also anticipates that once the reconductoring is completed the Customers' alleged service reliability problems will abate. The City is in the process of installing monitoring

¹The motion requests an extension of 30 days following the date of issuance of the order granting the motion to file a responsive pleading.

equipment that will instantaneously report any electric service interruptions that affect primary service to the transformer that serves the Customers.

5. The City maintains that the Customers lack standing to challenge a Commission approved territorial agreement and have failed to state a cause of action for the relief requested in the Petition. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981); Storey v. Mayo, 217 So.2d 304 (Fla. 1968). The Commission is without statutory authority to address and resolve such a petition. The Commission's lack of statutory authority to adjudicate a petition such as the one filed by the Customers is bottomed in and consistent with the intent and language of Section 366.02, Florida Statutes (1993), including: (a) the intent of territorial agreements to bring certainty, efficiency and cost-effectiveness to the provision of retail electric service; (b) the Commission's mandate to avoid the uneconomic duplication of electric facilities; and (c) the Commission's mandate to ensure the planning, development and maintenance of a coordinated electric power grid throughout the State of Florida to assure adequate and reliable service for operational and emergency purposes. Opening the door to unending petitions by customers subject to a Commission approved territorial agreement who wish to change retail electric service providers would undermine the purposes, goals and benefits which have been brought by territorial agreements and would thwart the Commission's ability to meet its statutory responsibilities described above.

Accordingly, if a settlement of this matter, including withdrawal of the Petition, is not consummated prior to the anticipated deadline for the City to file its responsive pleading, the City will file a motion to dismiss the Petition.

6. On November 17, 1995, Customers served their First Set of Interrogatories (numbers 1-15) upon the City. A response to these interrogatories would require extensive research and significant expenditure of time, personnel and resources by the City.

7. Rule 25-22.034, Florida Administrative Code, provides that parties to Commission proceedings "may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Under Rule 1.280(c), Florida Rules of Civil Procedure, a protective order may be granted "for good cause shown . . . to protect a party or person from . . . undue burden or expense . . ." In that regard, it is within the discretion of the trial court to postpone discovery pending the determination of material, outstanding motions. Deltona Corporation v. Bailey, 336 So.2d 1163 (Fla. 1976) (discovery may be postponed for a short period of time pending determination of material, outstanding motions, but not for a protracted period such as twelve months); see also Hollywood Inc. v. Broward County, 90 So.2d 47 (Fla. 1956).

8. Given the likelihood that the Customers do not have standing to challenge the Commission approved and existing territorial agreement between the City and Talquin Electric

Cooperative, Inc. ("Territorial Agreement")² and the failure of the Petition to state a legal cause of action for relief, the City maintains that the substantial time and effort required to be expended by the City to respond to the Petitioners' discovery requests would be an undue, unnecessary and unjustified burden on the City. The Petition is not scheduled for final hearing at this time. If the parties are unable to reach a settlement or if the City's motion to dismiss is denied, ample time will remain to conduct discovery and prepare for hearing. The Customers will not be prejudiced by granting the relief requested herein.

9. Accordingly, the City requests the Prehearing Officer to enter a protective order relieving the City of any obligation to respond to the Customers' First Set of Interrogatories. If this case is not settled and the City's motion to dismiss is denied, the City would request a period of fifteen (15) days following the date of the order denying the motion to dismiss in which to respond to the Customers' First Set of Interrogatories which are not subject to the specific objections outlined below.

10. Interrogatory No. 1 in said First Set of Interrogatories states as follows:

1. Where is the nearest power source to 7600 Bradfordville Road located and exactly how many miles away is it located?

The City objects to Interrogatory No. 1 as overly broad and vague. The term "power source" is vague and undefined, possibly referring to power plants, substations, transformers, etc. The

²See Order No. 22506, 90 F.P.S.C. 2:71 (1990).

City is unable to respond to this interrogatory as written.

11. Interrogatory Nos. 2 and 3 in said First Set of Interrogatories state as follow:

2. Does the City have the capability to use Talquin electricity with a City meter to provide electricity to the Denker-Lehrman home?

3. If your answer to #3 [sic] was "no", please list all steps which would have to be taken in order to overcome such impediments and if your answer to #3 was "yes", please list all objections to doing so (include in your answer all policy or monetary issues in addition to any mechanical issues).

The City objects to Interrogatory No. 2 on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence inasmuch as the City is not authorized to provide electric service to the Customers' home pursuant to such arrangements with Talquin under the Territorial Agreement. The City objects to Interrogatory No. 3 on the same grounds and to the extent it would require the City to divulge privileged factual information pertaining to the Petition and prepared or gathered in connection with it ("fact work product")³ and/or privileged impressions, conclusions, opinions or theories of the City's counsel concerning this litigation ("opinion work product").⁴

12. Interrogatory No. 6 in said First Set of Interrogatories states as follows:

³See Rule 1.280(c)(3), Fla. R.Civ.P.; State v. Rubin, 495 So.2d 257, 262-263 (Fla. 3d DCA 1986).

⁴Id.

6. List all of the City's objections to allowing Talquin to provide electricity directly to 7600 Bradfordville Road.

The City objects to Interrogatory No. 6 for the same reasons cited in its objections to Interrogatory No. 3 above which are incorporated herein by reference.

13. Interrogatory No. 7 in said First Set of Interrogatories states as follows:

7. How much income has been generated for the City by 7600 Bradfordville Road on an annual basis since service began? (Please break down your answer in terms of gross profits and net profits after expenses).

The City objects to Interrogatory No. 7 on the grounds that the requested information is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding, and that it would be unduly burdensome and expensive for the City to respond to this inquiry. The Petition alleges that the Customers have experienced frequent power outages. The Petition does not place at issue either the charges for service provided by the City or the income that the City derives from sales of electricity. The City would be required to exhaust many personnel-hours to research the relevant data and perform the calculations necessary to respond to this interrogatory, particularly that part of the interrogatory requesting "net profit" information. The City is under no obligation to create and complete studies or analysis of data in order to respond to a party's discovery request. See, e.g., In re: Application for rate increase by SOUTHERN STATES UTILITIES, INC., Order No. PSC-92-0819-PCO-WS, issued August 14, 1992.

14. Interrogatory No. 8 in said First Set of Interrogatories states as follows:

8. Can the City demonstrate any serious financial or other loss if the Denker-Lehrman house is switched to Talquin? If so, please state what that loss would be and what documents the City is relying upon to justify this conclusion. Also, please describe each such document sufficient to identify it for production purposes.

The City objects to Interrogatory No. 8 as vague, speculative and not reasonably calculated to lead to admissible evidence in this proceeding. The term "serious" is vague and undefined. As with Interrogatory No. 7, this interrogatory raises issues concerning potential financial impacts to the City if the Customers' home is switched to Talquin, an issue not raised in the Petition and not reasonably calculated to lead to admissible evidence. Further, the extent of financial loss incurred by the City if the Customers' home is switched to Talquin is replete with speculation as such losses may depend upon the arrangement for service provided by Talquin (i.e., through or not through a City meter), additional losses which may be incurred if other City customers are permitted to switch to Talquin, and issues pertaining to the level of stranded investment. Finally, as previously noted, the City is not required to undertake such analysis as part of the discovery process.

15. Interrogatory No. 9 in said First Set of Interrogatories states as follows:

9. Please identify by name, address and telephone number anyone from whom the City has received complaints about reliability of electric service in the past 10 years.

The City objects to Interrogatory No. 9 on the grounds that the requested information is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Further, the interrogatory is overly broad and it would be unduly burdensome and expensive for the City to conduct the research necessary to respond to this inquiry. The Petition alleges that the Customers have experienced frequent power outages. The Petition does not place at issue service reliability of other customers. The identification of specific customers that complained of service reliability ten years ago is irrelevant to the subject matter of this proceeding. The City would be required to exhaust many personnel-hours to compile the data necessary to respond to this interrogatory and should be relieved of any obligation to do so.

16. Interrogatory No. 10 in said First Set of Interrogatories states as follows:

10. For each person so named, describe the nature of the complaint and the City's response. Also, please state whether the complainant was ultimately satisfied with the improvements provided by the City.

The City objects to Interrogatory No. 10 for the same reasons cited in its objections to Interrogatory No. 9 above which are incorporated herein by reference.

17. Interrogatory No. 15 in said First Set of Interrogatories states as follows:

15. Please identify each and every memo, handwritten or typed note or other public document of any type concerning:


a) The specific request by Denker and Lehrman to allow their home to switch to Talquin

b) General policy or other issues of concern associated with allowing modification of the City's territorial agreement with Talquin.

The City objects to Interrogatory No. 15 as it relates to any documents that may contain legal theories and positions advanced by the City or its counsel in this docket. Accordingly, any such documents are protected by the work product privilege and exception to discovery under Rule 1.280(b)(3), Florida Rules of Civil Procedure, and appellate court decisions construing that rule. See, e.g., Surf Drugs, Inc. v. Vermette, 236 So.2d 108, 112 (Fla. 1970).

WHEREFORE, for the foregoing reasons, the City of Tallahassee respectfully requests the Prehearing Officer to enter a protective order relieving the City of any obligation to respond to the Customers' First Set of Interrogatories pursuant to the terms and conditions set forth in Paragraph 9 above. If the Prehearing Officer does not grant such relief, the City requests, in the alternative, that a protective order be issued relieving the City of any obligation to respond to Interrogatory Nos. 1, 2, 3, 7, 8, 9, 10 and 15 of the Customers' First Set of Interrogatories.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 22nd day of December, 1995:

Randall E. Denker
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Paul A. Lehrman
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