

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Petition for Determination )  
of Need for an Electrical Power )  
Plant in Okeechobee County by )  
Okeechobee Generating Company, )  
L.L.C. )  
\_\_\_\_\_ )

DOCKET NO. 991462-EU

Submitted for filing: November 15, 1999

**TAMPA ELECTRIC COMPANY'S OBJECTIONS TO  
OKEECHOBEE GENERATING COMPANY'S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS**

Tampa Electric Company ("Tampa Electric"), by its attorneys, hereby files its objections to Okeechobee Generating Company, L.L.C.'s First Request for Production of Documents to Tampa Electric (No. 1- 25) as follows:

**General Objections**

The request for production of documents propounded by OGC to Tampa Electric on November 5, 1999, are not calculated to lead to the discovery of relevant evidence. To the contrary, these document requests are designed to unnecessarily burden and harass Tampa Electric. As discussed below, the magnitude of the document search that would be required in order for Tampa Electric to be even moderately responsive would be enormously expensive, time consuming and labor intensive.

Although Tampa Electric intends to participate fully in this proceeding, it does not plan to sponsor a witness. Its involvement in the proceeding will be primarily through cross-examination, where necessary, and through post-hearing briefs. Since Tampa Electric is not an applicant or respondent in this proceeding, it has no burden of proof nor any burden of coming forward with evidence in this proceeding. Therefore, the relevance or usefulness to the Commission or OGC of the documents requested from Tampa Electric is questionable at best.

DOCUMENT NUMBER-DATE

~~14805~~ NOV 15 99

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No doubt, OGC will find a creative way to argue, nonetheless, that these documents are essential to its ability to meet its burden of proof in this proceeding. However, such assertions can and should be pre-emptively dismissed since OGC did not find it necessary to join Tampa Electric in this proceeding as an essential party. OGC's decision not to do so can only be taken as an admission that it did not need or intend to rely on discovery from Tampa Electric to meet its burden of proof. Nonetheless, in an effort to punish Tampa Electric for its intervention, OGC has now served extensive, unduly burdensome discovery on Tampa Electric, including 25 requests for the production of documents. Tampa Electric objects to responding to this discovery.

The objections stated herein are preliminary and are made at this time for the purpose of complying with the requirement in the Commission's order establishing Procedure in this docket that objections to discovery requests must be filed within ten (10) days of the receipt of such requests. Given the intentionally broad and open-ended nature of OGC's document requests, it would be weeks, if not months, before responsive documents could be identified. Therefore, should additional grounds for objection be discovered if Tampa Electric is required to search for responsive documents, the Company reserves the right to supplement, revise, or modify its objections prior to the time that it produces any documents. Should Tampa Electric determine that a protective order is necessary with respect to any of the documents requested by OGC, then Tampa Electric reserves the right to file a motion with the Commission seeking such an order prior to the time that it produces any documents to OGC.

Without waiving this position, Tampa Electric makes both general and specific objections to OGC's request for production of documents to Tampa Electric, as follows.

1. Tampa Electric objects to each and every document request to the extent that such request calls for information that is exempt from discovery by virtue of the Attorney/Client privilege, work product privilege, or other applicable privilege or protection provided by law, whether such privilege or protection appears at the time response is first made to these interrogatories or is later determined to be applicable based on the discovery of documents, investigation, or analysis.
2. Tampa Electric objects to each and every request for documents insofar as the request is vague, ambiguous, overly broad, imprecise or uses terms that are subject to multiple interpretations but are not properly defined or explained.
3. Tampa Electric objects to each request for documents to the extent that responding to the request would be unduly burdensome, expensive, oppressive, or excessively time consuming.
4. Tampa Electric objects to each request for documents to the extent that the information sought is already in the public record before this Commission or elsewhere, and is available to OGC through normal procedures.
5. Tampa Electric objects to any request for documents that calls for confidential proprietary business information and/or the compilation of information that is considered confidential proprietary business information, including "Trade Secrets" which are privileged pursuant to Section 90.506, Florida Statutes.
6. Tampa Electric objects to any request for documents that calls for the creation of information as opposed to the reporting of presently existing information as purporting to expand Tampa Electric's obligations under the Uniform Rules and Rule 1.340, Florida Rules of Civil Procedure.

7. Tampa Electric objects to the request that documents be produced to Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301. Tampa Electric is required only to produce documents at a reasonable time, place, and manner.
8. Tampa Electric objects to any request that requires the production of “all” or “each”, as it cannot give assurances, even after a good faith and reasonably diligent attempt, that “all” or “each” responsive document will be found. Indeed, it may well be impossible to assure compliance with the exercise of reasonable diligence.

Tampa Electric incorporates by reference all of the foregoing general objections into each of its specific objections set forth below as though pleaded therein.

#### **Specific Objections**

1. Tampa Electric objects to Document Request Nos. 1 through 3 on the grounds that they are irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the documents requested pertain to Tampa Electric’s standing to intervene, a matter that has been rendered moot by the Presiding Officer’s November 4, 1999 ruling granting Tampa Electric intervenor status.
2. Tampa Electric objects to Document Request Nos. 4 through 7, 18, 20 and 21 on the grounds that they are irrelevant, unnecessarily broad, argumentative, unduly burdensome, may require the disclosure of privileged, confidential or commercially sensitive information and are not reasonably calculated to lead to the discovery of admissible evidence.

3. Tampa Electric objects to Document Request No. 8 on the grounds that it is irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request calls for a legal opinion which counsel for OGC can provide for his client and may require the disclosure of privileged, confidential or commercially sensitive information
4. Tampa Electric objects to Document Request Nos. 9 through 12 on the grounds that they are irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.
5. Tampa Electric objects to Document Request No. 13 on the grounds that it is irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the method for calculation of reserve margins is being addressed currently by the Commission in Docket No. 981890-EU.
6. Tampa Electric objects to Document Request Nos. 14, 15 and 16 on the grounds that they are irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, these requests may require the disclosure of privileged, confidential or commercially sensitive information.
7. Tampa Electric objects to Document Request No. 17 on the grounds that it is irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

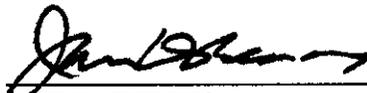
8. Tampa Electric objects to Document Request Nos. 22 and 23 on the grounds that they are irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, the treatment of Tampa Electric's wholesale sales for purposes of retail ratemaking is a subject that is reviewed by the Commission on an ongoing basis in various Commission proceedings.
9. Tampa Electric objects to Document Request No. 24 on the grounds that it is irrelevant, unnecessarily broad, argumentative, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Tampa Electric's position in this matter is essentially the same as its position in Docket No. 981042-EM, In Re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P. and Docket No. 971337-EU, Petition of Duke Mulberry Energy, L.P. and IMC-Agrico Company for a Declaratory Statement Concerning Eligibility to Obtain Determination of Need Pursuant to Section 403.519, F.S. . Tampa Electric's briefs and motions in the above-mentioned dockets are a matter of public record.
10. Tampa Electric objects to Interrogatory No. 25 on the grounds that it may be rendered moot if Tampa Electric's objections are upheld. In any event, this request would be unduly burdensome, if deemed relevant, given the large number of people who would be called upon to assist in the searching, gathering and preparation of responsive documents.

**WHEREFORE**, Tampa Electric submits the foregoing objections to Okeechobee  
Generating Company's First Request for Production of Documents (Nos. 1 through 25).

**DATED** this 15<sup>th</sup> day of November 1999.

Respectfully submitted,

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing TAMPA ELECTRIC COMPANY'S OBJECTIONS TO OKEECHOBEE GENERATING COMPANY'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been furnished either by hand delivery, facsimile or overnight courier to the following counsel of record this 15<sup>th</sup> day of November, 1999.

  
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