

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Hadson)	DOCKET NO. 910828-EI
Development Corporation against)	
Tampa Electric Company for Failure)	ORDER NO. 25222
to Negotiate.)	
<hr/>		ISSUED: 10/15/91

ORDER DENYING MOTION TO DISMISS

On August 1, 1991, Hadson Development Corporation filed a complaint against Tampa Electric Company, alleging that the utility failed to comply with this Commission's rules requiring electric utilities to negotiate in good faith with cogenerators for the purchase of capacity. Hadson alleges that TECO's unwarranted delays, postponements, and unlawful refusals to negotiate thwarted Hadson's efforts to negotiate a contract for the sale of capacity that would enable TECO to avoid the construction of certain generating units identified in its generation expansion plan.

Specifically, Hadson states:

1. That it is an experienced developer of cogeneration projects;
2. That it intends to develop a project that will use thermal energy in a water desalinization process that will help the Tampa area meet its future needs for potable water;
3. That it proposes to develop its cogeneration project with a contract to deliver 220 MW of capacity with an operation date of January 1, 1997;
4. That its project can also accommodate a phasing in of capacity to TECO in 1995, 1996, 1997, or 1998;
5. That during the period from November 15, 1990 to June of 1990 it repeatedly attempted to conduct substantive negotiations with TECO for the sale of Hadson's projected capacity;
6. That TECO insisted on constructing its own 220 MW generating unit on its Polk County site to be phased in from 1995 to 1997, and TECO refused to negotiate with Hadson for the purchase of capacity to avoid construction of that unit;
7. That TECO insisted Hadson negotiate with respect to a 1998 avoided unit, and then informed Hadson that it would have to negotiate on a 1999 unit if the Commission approved its 1996 standard offer and enough standard offer contracts were received to avoid the construction of that unit before Hadson and TECO reached an agreement;

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8. That although TECO had insisted that it assume responsibility for preparing a draft power sales agreement, TECO repeatedly delayed submission of that draft agreement and never did produce it;
9. That TECO repeatedly cancelled or postponed meetings and thus repeatedly delayed negotiations;
10. That on June 5, 1991 TECO unilaterally refused to engage in further negotiations with Hadson, citing the pendency of two Commission dockets (Docket No. 910004-EU and Docket No. 910603-EQ) as its justification.

TECO filed its Answer to Hadson's Complaint on August 20, 1991, and it also filed a Motion to Dismiss at that time. TECO does not assert in its Motion that the Complaint fails to state a cause of action upon which relief can be granted. The sole legal ground proposed in support of the Motion is that the Complaint is not "ripe" for Commission determination. TECO claims that Hadson's proposed cogeneration project is "so far out in the future" that Hadson's desire to negotiate at this time is unreasonable and evidences no regard for the negative effects that might occur to TECO's ratepayers. TECO also claims that Commission resolution of Hadson's complaint cannot go forward because of other pending dockets that may affect the relationship between TECO and Hadson.

To prevail on this motion to dismiss, TECO must affirmatively and definitively demonstrate that the facts alleged by Hadson, viewed in the light most favorable to Hadson, fail to set forth any claim cognizable by this Commission. With that standard in mind it is clear that the motion is without legal merit.

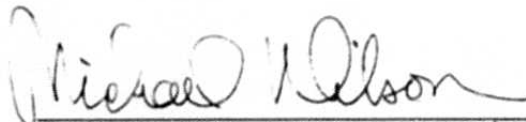
The allegations of Hadson's complaint, taken as true for purposes of this motion, establish the jurisdiction of this Commission over the cause, and set forth all necessary elements of a present and justiciable claim for failure to negotiate in good faith under the provisions of our Rule 25-17.0834, Florida Administrative Code. TECO's concerns about the timeliness of other dockets and Hadson's proposed project, or its proposal that negotiations be delayed, may be defenses to the claim that TECO has failed to negotiate in good faith. They do not relate to the sufficiency of the Complaint itself. The Complaint does not consist of vague allegations of future harm. It consists of specific allegations of acts and failures to act that have already occurred and that form the basis upon which relief can be granted at this time.

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It is therefore

ORDERED that for the reasons stated in the body of this order Tampa Electric Company's Motion to Dismiss is denied.

By ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 15th day of OCTOBER, 1991.



MICHAEL MCK. WILSON, Commissioner
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or sewer utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.