

# AUSLEY & McMULLEN

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June 14, 2012

HAND DELIVERED

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12 JUN 14 PM 3:59  
COMMISSION  
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Ms. Ann Cole, Director  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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 Amended Petition with Prejudice.

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  
03878 JUN 14 2012  
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 110305-EI

FILED: June 14, 2012

**TAMPA ELECTRIC COMPANY'S MOTION TO DISMISS  
AMENDED PETITION WITH PREJUDICE**

Tampa Electric Company ("Tampa Electric" or "the company") moves the Commission for entry of an order dismissing with prejudice the Amended Petition filed by Petitioner, Edward McDonald, in this proceeding on June 12, 2012 and, as grounds therefor, says:

1. This proceeding had its origin in an informal complaint filed on May 3, 2011 by Mr. McDonald alleging improper billing of \$915.94 and requesting a \$3,500.00 refund for alleged overpayments made in 2004. After exhaustive consideration of Mr. Donald's allegations, the Commission's Staff sent a proposed resolution letter to Mr. McDonald stating that he was billed correctly for the \$915.94 and stating that the \$3,500.00 claim had already been addressed and rejected in a complaint that had already been closed. On November 4, 2011 Mr. McDonald filed a formal complaint rejecting the resolution proposed by Staff.

2. On February 7, 2012 the Commission issued its order<sup>1</sup> denying Mr. McDonald's request for relief against Tampa Electric.

<sup>1</sup> Order No. PSC-12-0053-PAA-EI

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3. Mr. McDonald subsequently filed a petition for a formal proceeding addressing the same claims against Tampa Electric that Mr. McDonald had addressed in the earlier informal complaint. Tampa Electric filed a Motion to Dismiss on March 16, 2012, pointing out in part that Mr. McDonald's petition for a formal proceeding failed to offer any new or different allegations or argument from that put forth in the informal complaint.

4. On May 23, 2012 the Commission entered its Order<sup>2</sup> granting Tampa Electric's Motion to Dismiss. In that Order the Commission concluded that Mr. McDonald had failed to state a cause of action with respect to both the \$915.94 amount as well as the \$3,500.00 amount that Tampa Electric returned to the bank on the bank's assertion that Mr. McDonald had no authority to draw on the account from which the funds were taken. That Order stated that Mr. McDonald's assertions and allegations do not constitute disputed issues of material fact or demonstrate the requisite facts and statutes that would require reversal or modification of the earlier PAA Order.

5. Mr. McDonald's Amended Petition filed June 12, 2012 merely re-asserts the same allegations regarding both the \$915.94 amount as well as the claim for \$3,500.00 plus interest. Tampa Electric adopts and incorporates herein by reference the argument and authorities set forth in its March 16, 2012 Motion to Dismiss as grounds for dismissing the Amended Petition. The only thing new in the June 12 Amended Petition is an erroneous interpretation of a court decision previously cited by Tampa Electric,<sup>3</sup> which Mr. McDonald attempts to rely on to support the erroneous argument that the statute of limitations set forth in Chapter 95, Florida Statutes, bars Tampa Electric's claim for the \$915.94 amount that Mr. McDonald has yet to pay.

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<sup>2</sup> Order PSC-12-0252-FOF-EI

<sup>3</sup> Sarasota County v. National City Bank of Cleveland, Ohio, 902 So.2d 233 (Fla. 2nd DCA 2005)

6. The Commission's May 23, 2012 Order granting Tampa Electric's Motion to Dismiss stated that under Section 120.569(2)(c), Florida Statutes, dismissal of Mr. McDonald's petition shall, at least once, be without prejudice to Petitioner's filing a timely amended motion curing the defect in the earlier petition. The Amended Petition fails to do this and should be dismissed with prejudice.

WHEREFORE, Tampa Electric Company moves the Commission to dismiss with prejudice the June 12, 2012 Amended Petition filed in this proceeding.

DATED this 14<sup>th</sup> day of June 2012.

Respectfully submitted,



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J. JEFFRY WAHLEN  
Ausley & McMullen  
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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

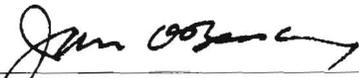
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S.

Mail on this 14<sup>th</sup> day of June 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