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November 15, 2012

HAND DELIVERED

RECEIVED-PPSC
12 NOV 15 PM 3:40
COMMISSION
CLERK

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

Re: Robert D. Evans' formal complaint against Tampa Electric Company requesting reimbursement of money paid for installation of infrastructure on Mr. Evans' property for which Tampa Electric Company failed to complete FPSC Docket No. 120192-EI

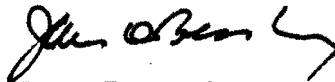
Dear Ms. Cole:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion to Dismiss Petition with Prejudice and to Deny Hearing Request.

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

COM _____
AFD _____
APA _____
ECO 2
ENG _____
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cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Robert D. Evans' formal complaint)
against Tampa Electric Company requesting)
reimbursement of money paid for installation)
of infrastructure on Mr. Evans' property for)
which Tampa Electric Company failed to)
complete.)
_____)

DOCKET NO. 120192-EI

FILED: November 15, 2012

**TAMPA ELECTRIC COMPANY'S MOTION TO DISMISS
PETITION WITH PREJUDICE AND TO DENY HEARING REQUEST**

Tampa Electric Company ("Tampa Electric" or "the company"), pursuant to Rule 28-106.204, Florida Administrative Code, moves the Florida Public Service Commission ("the Commission") to dismiss with prejudice the petition that was submitted but not properly filed or served in this proceeding on November 9, 2012 and to deny the hearing requested in that petition and, as grounds therefor, says:

1. Section 120.569, Florida Statutes, states that, unless otherwise provided by law, a petition or request for hearing shall include those items required by the Uniform Rules adopted pursuant to Section 120.54(5)(b), Florida Administrative Code. Section 120.569, Florida Statutes, further states that a petition shall be dismissed if it is not in substantial compliance with these requirements.

2. Rule 28-106.201, Florida Administrative Code, adopted to implement Section 120.54(5)(b), Florida Statutes, prescribes the requirements of a petition to initiate a proceeding to consider matters involving disputed issues of material fact. Under subsection (2)(b) of this rule, all such petitions shall contain:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

(c) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

3. Mr. Evans petition is anything but concise. Moreover, the petition fails to allege facts upon which one could conclude that Tampa Electric was paid any monies by the prior owner of the property in question to install the underground cable and transformer that were installed by Tampa Electric at Mr. Evans' specific request. The petition alleges no specific fact or facts warranting reversal or modification of the Commission's proposed agency action order¹ denying Mr. Evans' requested relief.

4. Rule 28-106.201 also requires all petitions to contain:

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; . . .

Mr. Evans' November 9 petition fails to cite any statute or rule warranting reversal of the Commission's proposed denial of Mr. Evans' request for refund of monies from Tampa Electric or its denial of Mr. Evans' request for attorney's fees and costs contained in the Commission's October 19, 2012 PAA order.

5. Rule 28-106.201 also requires all petitions to contain:

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

Mr. Evans' November 9 petition appears to request two things. First, it requests that the PAA order be set aside and the matter set for hearing by an administrative judge. That request should be denied because of the previously described failings of the petition to comply with Section 120.569, Florida Statutes, as implemented in Rule 28-106.201, Florida Administrative Code.

¹ Order No. PSC-12-0556-PAA-EI issued October 19, 2012 in this proceeding.

The second thing sought in the petition's prayer for relief is that this Commission (referred to as "this court" in the petition) "enter an order requiring the specific performance of TECO in providing electrical service through the prior executed contract to Subject Property." This is patently vague, as it is unclear what "prior executed contract to Subject Property" the petition is referring to. If petitioner is attempting to refer to some contract under which Tampa Electric allegedly was paid monies to install underground electric service on the property in question for the prior owner of the property, the petition fails to include any executed contract or other document evidencing any such payment. Moreover, the Commission lacks authority to order specific performance. In Biltmore Construction Company v. Florida Department of General Services, 363 So.2d 851 (Fla. 1st DCA 1978), the DCA reversed an order of the Florida Department of General Services observing:

The final order departs from the essential requirements of law. It orders specific performance of contract which only a court in the exercise of its equitable powers may decree. . .(citations omitted)

6. The November 9 petition should also be dismissed because it was not properly filed in compliance with Rule 28-106.104, Florida Administrative Code. That rule states in pertinent part:

(2) All pleadings filed with the agency shall contain the following:

* * *

(f) A certificate of service that copies have been furnished to all other parties as required by subsection (4) of this rule.

The November 9 petition contains no certificate of service.

7. Subsection (4) of Rule 28-106.104 states:

(4) Whenever a party files a pleading or other document with the agency, the party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of

service shall accompany each pleading or other document filed with the agency.

The November 9 petition was not served on Tampa Electric or its counsel.

8. The November 9 petition fails to comply with Section 120.569, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, in a number of significant ways and was neither filed nor served in accordance with the requirements of Rule 28-106.104, Florida Administrative Code. Accordingly, the petition should be dismissed and the hearing requested in the petition should be denied.

Dismissal Should be with Prejudice

9. Section 120.569(2)(c), Florida Statutes, provides the following regarding dismissal of petitions that are not in substantial compliance with the requirements of the Uniform Rules:

. . .Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. (Emphasis supplied.)

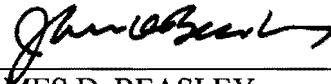
Mr. Evans' initial complaint was denied by the Commission for Mr. Evans' failure to provide any written documentation of the prior owner's payment to Tampa Electric and because that complaint sought relief which the Commission concluded it did not have statutory authority to provide. The November 9 petition, likewise, fails to allege or provide any documentation of the prior owner's payment to Tampa Electric and the relief requested in the petition, specific performance of an alleged contract, is beyond the jurisdiction of the Commission. Inasmuch as the petitioner has twice failed to allege facts that, if proven, would establish that any monies had been paid to Tampa Electric by the prior owner of the property in question, and has twice requested relief that is beyond the jurisdiction of the Commission to grant, the November 9

petition demonstrates on its face that affording petitioner a third attempt would be meaningless and a waste of the Commission's valuable time. Under these circumstances it conclusively appears from the face of the November 9 petition that the defect both in it and in the earlier complaint cannot be cured. Accordingly, the November 9 petition should be dismissed with prejudice.

WHEREFORE, Tampa Electric Company moves that the petition filed in this proceeding on November 9, 2012 be dismissed with prejudice and that the petitioner's request for a hearing be denied.

DATED this 15th day of November 2012.

Respectfully submitted,



JAMES D. BEASLEY
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(850) 224-9115

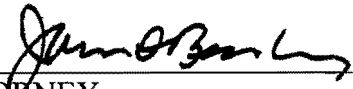
ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 15th day of November 2012 to the following:

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

J. Benton Stewart, II, Esquire
Stewart Law P.L.L.C.
11705 Boyette Road, Suite 205
Riverview, FL 33569



ATTORNEY