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August 16, 1999

HAND DELIVERED

RECEIVED-FPSC  
99 AUG 16 PM 3:40  
RECORDS AND REPORTING

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

Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor; FPSC Docket No. 990001-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to Staff's Request for In Camera Review and Motion to Compel Discovery.

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,

RECEIVED & FILED  
*[Signature]*  
DIVISION OF RECORDS

*[Signature]*  
James D. Beasley

AFA *[Signature]*  
APP DB/pp  
CAF Enclosures  
CMU  
CTR cc: All Parties of Record (w/enc.)  
EAG *[Signature]*  
LEG  
MAS 3  
OPC  
PAI  
SEC 1  
WAV  
OTH

DOCUMENT NUMBER-DATE

09725 AUG 16 99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery )  
Clause and generating performance incentive )  
factor. )  
\_\_\_\_\_ )

DOCKET NO. 990001-EI  
Filed: August 16, 1999

**TAMPA ELECTRIC COMPANY'S  
RESPONSE TO STAFF'S REQUEST FOR IN CAMERA  
REVIEW AND MOTION TO COMPEL DISCOVERY**

Tampa Electric Company ("Tampa Electric" or "the company") by and through its undersigned attorneys files this its Response to Staff's Request for In Camera Review and Motion to Compel dated August 4, 1999 and says:

**In Camera Inspection**

1. In response to Staff's Document Request No. 1 dated July 13, 1999, Tampa Electric on July 28, 1999 filed a timely objection to the production of an internal investigative report which was inappropriately described and which is in actuality a legal opinion prepared by and under the direction and supervision of Tampa Electric's outside litigation counsel prepared in anticipation of litigation and constitutes legal opinion, advice and work product and therefore is protected under the attorney/client privilege.

2. In its August 4, 1999 filing, Staff requests that the prehearing officer in this docket conduct an in camera review of the investigative report to determine whether the entire report or any portion thereof is protected material.

3. Due to the nature of the report an in camera inspection is unnecessary to determine that the document at issue here is privileged and should not be produced.

DOCUMENT NUMBER-DATE

09725 AUG 16 99

1500-RECORDS MANAGEMENT

4. The document in question is a communication to Tampa Electric's Risk Management department and to Tampa Electric's insurance carrier from an outside law firm specifically hired by Tampa Electric: (1) to represent the company in litigation which may arise out of the Gannon accident; and (2) to prepare and coordinate its defense in connection with litigation that may arise from the Gannon accident.

5. The communication would not have been made but for the contemplation of the need for legal services. Claims resulting from the event are covered in part by Tampa Electric's self-insurance and insurance programs. Under the terms of the coverage, the carrier assumes responsibility for Tampa Electric's legal defense after its self-insurance amount has been used. The lawyers' communication was intended to provide a basis for the conduct of Tampa Electric's defense for both the self-insured and covered aspects of the claims.

6. Circulation and use of the document within Tampa Electric has been strictly limited to those employees who have the specific responsibility for risk management, insurance coverage and legal services with regard to such matters.

7. The information contained in the document is also protected by the attorney work product privilege. The document at issue consists of the opinions, judgment and thought processes of counsel. In preparation of the document, the attorney's purpose at all times was to prepare for litigation.

8. The document on its face indicates it is a communication in contemplation of litigation.

9. It is in the interest of Tampa Electric's customers that every precaution be taken in minimizing the company's exposure in litigation involving the Gannon accident.

10. Tampa Electric seeks to avoid any issue in subsequent litigation concerning a waiver of its privilege with respect to this document. An in camera inspection by the Commission may be argued by some as an event which destroys the privilege which would otherwise apply. An in camera review would only serve to confirm the obvious while possibly jeopardizing Tampa Electric's ability to protect this material. Based on the description of the document contained herein, there can be no serious question of its entitlement to protection from disclosure under the attorney-client communication and attorney work product privileges.

11. If over the company's objection the Commission requires production of the document for in camera review, then the resulting Commission order should provide: (1) the company is producing the document solely in compliance with a lawful requirement of the Commission, (2) the in camera inspection will be conducted on a confidential basis by the prehearing officer or her designated aide, (3) the company, in complying with such requirement, specifically preserves, and does not waive, its attorney-client and attorney work product privilege with respect to any of the information contained in the document, and (4) the document will remain in the custody of the company during the in camera review.

**Response to Motion to Compel**


12. Staff's Motion to Compel requests fact work product divorced from mental impressions, conclusions, opinions, or legal theories of Tampa Electric's attorneys. The report prepared by the company's litigation counsel is a product of the attorney's investigative efforts, evaluations, legal theories and conclusions. As such, the report is protected in its entirety by the attorney-client privilege.

13. The Commission's Staff regularly carries out its duty of investigating prudence issues without undue burden and without requiring the production of sensitive attorney-client

communications and attorney work product. Considering the harm that could befall Tampa Electric and its customers if the privilege associated with the subject report is breached, the Commission should not deviate from its usual discovery practices in this instance.

WHEREFORE, Tampa Electric submits the foregoing as its response to Staff's Request for In Camera Review and Motion to Compel.

DATED this 16<sup>th</sup> day of August, 1999.

  
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LEE L. WILLIS and  
JAMES D. BEASLEY  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
850/224-9115

ATTORNEYS FOR TAMPA ELECTRIC  
COMPANY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Tampa Electric Company's Response to Staff's Motion to Compel Discovery has been furnished by U. S. Mail or by Hand Delivery (\*) this 16<sup>th</sup> day of August, 1999 to the following:

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ATTORNEY

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