

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 SET OF INTERROGATORIES**

Tampa Electric Company ("**Tampa Electric**"), by its attorneys, hereby files its objections to Okeechobee Generating Company, L.L.C.'s ("**OGC**") First Set of Interrogatories to Tampa Electric (No. 1- 46) as follows:

**General Objections**

The interrogatories propounded by OGC to Tampa Electric on November 5, 1999, are not calculated to lead to the discovery of evidence which will assist OGC in the prodigious task of meeting its burden of proof in this proceeding. To the contrary, these interrogatories are designed to unnecessarily burden and harass Tampa Electric. As discussed below, the matters raised in these interrogatories have been either rendered moot or have no reasonable nexus to the facts which OGC must adduce in order to establish its entitlement to "applicant" status under the Florida Power Plant Siting Act (the "**Siting Act**") or the need for its proposed project.

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. OGC has not alleged, to Tampa Electric's knowledge, that the need justification for its project is based upon or tied to Tampa Electric's utility specific

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resource needs or, for that matter, the utility specific resource needs of any other individual Florida electric utility. Therefore, the relevance or usefulness to the Commission or OGC of interrogatory responses from Tampa Electric is questionable at best. No doubt, OGC will find a creative way to argue, nonetheless, that these responses 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 46 interrogatories. 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 interrogatories, it would take a significant period of time to determine what is required in the way of answers to these interrogatories. Therefore, should additional grounds for objection be discovered if Tampa Electric is required to answer such interrogatories, the company reserves the right to supplement, revise, or modify its objections prior to the time that it submits answers. Should Tampa Electric determine that a protective order is necessary with respect to any of the information 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 answers OGC's interrogatories.

Without waiving this position, Tampa Electric makes both general and specific objections to OGC's interrogatories to Tampa Electric, as follows.

1. Tampa Electric objects to each and every interrogatory 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 interrogatory 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 interrogatory to the extent that responding to the interrogatory would be unduly burdensome, expensive, oppressive, or excessively time consuming.
4. Tampa Electric objects to each interrogatory 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 interrogatory 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 interrogatory 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.

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 each and every Interrogatory Nos. 1 through 16 on several specific grounds.

1.1 The subject matter raised by these interrogatories has been addressed already by the Prehearing Officer. These interrogatories represent nothing more than a tortured and unnecessary march through the allegations made by Tampa Electric with regard to standing in its October 20, 1999 Petition for Leave to Intervene in this proceeding. Although OGC saw fit to challenge Florida Power & Light's petition to intervene, it did not find it necessary or appropriate to challenge Tampa Electric's petition, despite the fact that it had two weeks to do so. In Order No. PSC-99-2153-PCO-EU, issued on November 4, 1999, the Prehearing Officer, in the absence of protest by OGC or any other party, granted Tampa Electric's Petition to Intervene. Interrogatory Nos. 1-16 are relevant, if at all, only to Tampa Electric's Petition to Intervene. Since OGC failed to challenge Tampa Electric's Petition in a timely manner and a decision has been rendered, in the absence of such challenge, to permit Tampa Electric to intervene, OGC cannot now be permitted to subvert the discovery process by attempting to belatedly cure its failure to act.

1.1. Tampa Electric's position on the matters raised in Interrogatory Nos. 1 through 16 is already a matter of public record in this docket and in similar, recent cases such as

Docket No. 981042-EM, In Re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusa 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.

- 1.2. Tampa Electric does not have information in the form requested under Interrogatory Nos. 1 through 16. Such information would have to be compiled and organized creating an unreasonable burden for Tampa Electric at a time when its resources are already stretched in preparing for this and several other concurrent regulatory proceedings.
- 1.3. Tampa Electric objects to Interrogatory Nos. 1 through 16, on the ground that they are argumentative and irrelevant.
2. Tampa Electric objects to Interrogatory No. 17 on the grounds that it is irrelevant, vague, ambiguous, might require the disclosure of confidential information, calls for speculation and would be burdensome to respond to. References to “written and unwritten corporate policies” and “cost effective and demonstrably reliable” are both vague and ambiguous. As is the case with each and every Interrogatory, this Interrogatory is “make work” which Tampa Electric should not be required to perform.
3. Tampa Electric objects to Interrogatory No. 18 on the grounds that it is irrelevant, vague, ambiguous, might require the disclosure of confidential information, and would be burdensome to respond to. The reference to “taking into consideration” makes the question vague and unanswerable.

4. Tampa Electric objects to Interrogatory No. 19 on the grounds that it is irrelevant, vague, ambiguous, might require the disclosure of confidential information, and would be burdensome to respond to. The reference to “taking into consideration” makes the question vague and unanswerable
5. Tampa Electric objects to Interrogatory No. 20 on the grounds that it is irrelevant, vague, ambiguous, might require the disclosure of confidential information, and would be burdensome to respond to. The reference to “account for, plan or integrate” and “directly committed to” makes the question vague and unanswerable
6. Tampa Electric objects to Interrogatory No. 21 on the grounds that it is irrelevant, vague, ambiguous, and would be burdensome to respond to. The reference to “account for, plan or integrate” and “directly committed to” makes the question vague and unanswerable. Also the open-ended reference to “other retail utilities” makes the question overly broad.
7. Tampa Electric objects to Interrogatory No. 22 on the grounds that it is irrelevant, vague, ambiguous, and would be burdensome to respond to. The reference to “other Florida Utilities” and “obligated” without some temporal or other context, combined with the open ended nature of the question, renders the question vague and unanswerable.
8. Tampa Electric objects to Interrogatory No. 23 on the grounds that it is irrelevant and calls for a legal opinion which able counsel for OGC, after reviewing applicable law, can most certainly render. It would be burdensome and unreasonable to require Tampa Electric to do OGC’s legal research. In any event, the reference to “conditions” is vague and ambiguous.
9. Tampa Electric objects to Interrogatory No. 24 on the grounds that it is irrelevant, vague, open-ended and, therefore, unanswerable. The lack of any temporal element in the question is a fatal flaw.

10. Tampa Electric objects to Interrogatory No. 25 on the grounds that it is irrelevant, vague, open-ended and, therefore, unanswerable. The lack of any temporal element in the question is a fatal flaw.
11. Tampa Electric objects to Interrogatory No. 26 on the grounds that it is irrelevant, extremely burdensome to respond to and vague in its reference to Tampa Electric's having "experienced transmission line exceedences."
12. Tampa Electric objects to Interrogatory No. 27 on the grounds that it is irrelevant, vague and ambiguous. The terms "economic incentive" and "maximize returns" are vague and undefined and the question lacks any temporal element.
13. Tampa Electric objects to Interrogatory Nos. 28, 29 and 30 on the grounds that they are irrelevant and burdensome to respond to. Tampa Electric does not have information in the form requested under Interrogatory No. 28, 29 and 30. Such information would have to be compiled and organized, creating an unreasonable burden for Tampa Electric at a time when its resources are already stretched in preparing for this and several other concurrent regulatory proceedings.
14. Tampa Electric objects to Interrogatory Nos. 31 and 32 on the grounds that they are completely irrelevant and call for the disclosure of confidential or commercially sensitive information. OGC's burden in this proceeding is to demonstrate that its proposed plant is needed. A fishing expedition with regard to Tampa Electric's interest or involvement or lack of interest or involvement with merchant plants in Florida or elsewhere constitutes an abuse of the discovery process since such matters have nothing to do with the elements which OGC must prove in order to meet its burden.

15. Tampa Electric objects to Interrogatory Nos. 33, 34, 35, and 36 on the ground that they are rendered moot by Tampa Electric's decision not to sponsor a witness in this proceeding. In addition, Interrogatory No. 33 would be unduly burdensome, if deemed relevant, given the large number of people who would be called upon to assist in the preparation of required responses. Interrogatory No. 36 is speculative as discovery is not yet completed.
16. Tampa Electric objects to Interrogatory No. 37 on the grounds that it is irrelevant, vague, and burdensome to respond to and open ended with regard to time frame. The term "special protection systems" is not fully defined.
17. Tampa Electric objects to Interrogatory Nos. 38 through 41 on the grounds that they are irrelevant and burdensome to respond to. Any party seeking transmission service from Tampa Electric can obtain information with regard to the availability of transmission on Tampa Electric's system through the OASIS system. Such parties, at their expense, can request that Tampa Electric perform studies to determine whether there is a need for system upgrades in order to provide the requested service. It is unreasonable to ask Tampa Electric to compile the information requested for no apparent reason.
18. Tampa Electric objects to Interrogatory No. 42 on the grounds that it is irrelevant, may require the disclosure of confidential or commercially sensitive information, and, to the extent required by the Federal Energy Regulatory Commission, may be accessed through the OASIS.
19. Tampa Electric objects to Interrogatory Nos. 43 through 46 on the grounds that they are patently irrelevant. As noted above, if OGC is interested in applying for transmission service from Tampa Electric, it can do so through the OASIS mechanism.



**WHEREFORE**, Tampa Electric submits the foregoing objections to Okeechobee Generating Company's First Set of Interrogatories (Nos. 1 through 46).

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

Respectfully submitted,

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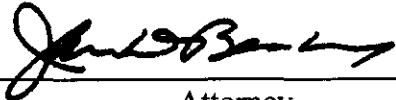
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CERTIFICATE OF SERVICE

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

  
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