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February 7, 1992

HAND DELIVERY

ORIGINAL  
FILE COPY

Mr. Steve C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32301

Re: Petition for resolution of territorial uncertainty  
as to whether electric service should be provided  
to certain facilities of an industrial phosphate  
customer by Tampa Electric Company or by Peace  
River Electric Cooperative; FPSC Docket No. 910811-EU

Dear Mr. Tribble:

Enclosed for filing in the above docket is the original and fifteen (15) copies of Tampa Electric Company's Response to Florida Power & Light Company's Objections to the Stipulation and Settlement Agreement filed by Tampa Electric Company, Peace River Electric Cooperative, Inc. and IMC Fertilizer, Inc.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

ACK

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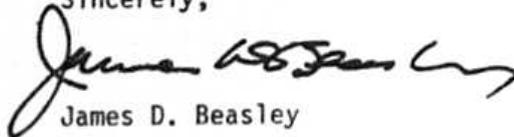
SEC

WAS

OTH

\_\_\_\_ Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

\_\_\_\_ JDB/pp  
\_\_\_\_ enc's.

cc: All Parties of Record (w/enc.)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
01432 FEB -7 1992  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for resolution of territorial uncertainty as to whether electric service should be provided to certain facilities of an industrial phosphate customer by Tampa Electric Company or by Peace River Electric Cooperative.

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)  
) DOCKET NO. 910811-EU  
) Submitted for Filing 2/7/92  
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**TAMPA ELECTRIC COMPANY'S RESPONSE TO  
FLORIDA POWER & LIGHT COMPANY'S OBJECTIONS  
TO THE STIPULATION AND SETTLEMENT AGREEMENT  
FILED BY TAMPA ELECTRIC COMPANY, PEACE RIVER  
ELECTRIC COOPERATIVE, INC. AND IMC FERTILIZER, INC.**

Tampa Electric Company ("Tampa Electric" or "the company") responds as follows to the above-referenced objections of Florida Power & Light Company ("FPL"):

1. FPL first claims that it was not served copies of the settlement documents which were agreed to by the other parties to this proceeding. While the names of FPL's attorneys were excluded from the Certificate of Service through administrative oversight, FPL's attorneys were furnished copies of the Stipulation and Settlement Agreement by facsimile transmission prior to January 16, 1992 when the proposed settlement was filed with the Commission.

2. FPL contends that the Stipulation and Settlement Agreement should not be considered by the Commission because FPL was not a party to the proposed settlement. This argument is without basis. A proposed settlement of a docketed matter does not have to be agreed to by all parties in order for the Commission to consider the proposal. On a number of occasions the Commission has considered and approved proposed dispute

DOCUMENT NUMBER-DATE  
01432 FEB -7 1992  
FPSC-RECORDS/REPORTING

resolutions agreed to by less than all of the parties to a particular docket.

3. Next, FPL contends that the Stipulation and Settlement Agreement does not provide the Commission with a factual foundation upon which the Commission's jurisdiction may be exercised. The petition filed by Tampa Electric Company sets forth a full and complete factual and legal basis for the Commission to resolve the territorial uncertainty described therein. The petition was sufficiently detailed to enable the Staff to prepare a recommendation. Surely if the Commission had jurisdiction to approve the Tampa Electric/Peace River Electric Cooperative, Inc. ("Peace River") Territorial Agreement in 1987, the Commission has jurisdiction to interpret its previous approval and to resolve the territorial uncertainty addressed in Tampa Electric's petition.

4. FPL's reference to Storey v. Mayo, 217 So.2d 304 (Fla. 1968) is misplaced. The Stipulation and Settlement Agreement does not provide for any retail electric Customer switching suppliers at any future date on the basis of rates. If the settlement agreement is terminated, the issue of retail electric service in northeast Manatee County, excluding IMCF's Four Corners plant which shall be continued by Tampa Electric, would be resubmitted to the Commission for resolution under the express terms of paragraph 6 of the Stipulation and Settlement Agreement. The Commission, not the Customer, would decide.

5. Paragraph 6 of FPL's objections criticizes Tampa Electric's service of IMC Fertilizer, Inc.'s ("IMCF") end-use facilities in Manatee County. It is difficult to comprehend how that criticism can form the basis for opposing the Stipulation and Settlement Agreement inasmuch as Commission approval of the Stipulation and Settlement Agreement would

result in Peace River providing the retail electric service in question rather than Tampa Electric. From a reading of paragraph 6 of the objections, it appears that FPL has misinterpreted the Stipulation and Settlement Agreement as somehow calling for Tampa Electric's provision of retail electric service to the IMCF facilities in Manatee County. That simply is not the case.

6. In paragraph 7 of its objections, FPL states that the Stipulation and Settlement Agreement presents for Commission approval wholesale provisions outside of the Commission's jurisdiction. This, too, is erroneous. Tampa Electric has filed its proposed wholesale rate for Seminola Electric Cooperative, Inc. with the Federal Energy Regulatory Commission, as provided for in the Stipulation and Settlement Agreement. FERC has issued its notice of acceptance of filing which authorizes service under this rate schedule effective February 21, 1992. A copy of the FERC notice of acceptance dated January 29, 1992 is attached hereto as Exhibit "A". FPL's reference to Commission acceptance of Peace River's retail tariff is also puzzling. Paragraph 3 of the Stipulation and Settlement Agreement makes it clear that the preparation and submission of such a tariff is a part of the settlement proposal. Peace River's proposed tariff has been filed with the Commission since January 7, 1992 and there is no impediment to the Commission approving that retail rate as a part of the overall settlement package.

6. In paragraph 8 of its objections FPL seems to be suggesting that FPL has an interest in serving IMCF's facilities in Manatee County only in the event Peace River should not serve those facilities. This undermines the basis for any FPL objection to the Stipulation and Settlement

Agreement, the result of which would have Peace River providing retail electric service to the IMCF facilities in question.

7. In paragraph 9 of its objections FPL recommends that the Commission enter an order precluding Tampa Electric from serving end-use facilities in Manatee County, whereas the stipulation in question, if approved, would result in Peace River providing that retail electric service. Stated differently, if the Commission approves the Stipulation and Settlement Agreement, it need not reach the issue raised by FPL regarding Order No. 17585.

8. Tampa Electric concurs with FPL's observation in paragraph 10 that this matter should be resolved without delay. The company disagrees with FPL's suggestion that the approvals required under the settlement agreement could "involve months or years of delay." As stated above, the FERC has already accepted the Tampa Electric/Seminole wholesale rate and the Commission has before it the retail rate proposed by Peace River. There simply is no reason to believe that any delay would occur if the Stipulation and Settlement Agreement is approved.

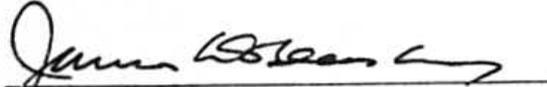
9. Finally, in paragraph 11 FPL requests a hearing pursuant to §120.57, Fla. Stat. FPL has failed to state any basis for requesting a formal or informal hearing under §120.57, Fla. Stat. FPL's objections are misdirected. They attack a Stipulation and Settlement Agreement, the approval of which would bring about a result which FPL characterizes as acceptable in its objections, i.e., Peace River's provision of retail electric service to the IMCF facilities in Manatee County. In this respect, FPL's position (and its objections) are confusing. Given the concerns which FPL has expressed, it would seem that FPL should endorse the Stipulation and Settlement Agreement as an alternative to the Staff's

earlier recommendation, since Peace River would provide retail electric service under the former, whereas Tampa Electric would serve under the latter.

WHEREFORE, Tampa Electric submits the foregoing in response to the objections filed on behalf of Florida Power & Light Company.

DATED this 7<sup>th</sup> day of February, 1992.

Respectfully submitted,



---

LEE L. WILLIS  
JAMES D. BEASLEY  
Ausley, McMullen, McGehee,  
Carothers and Proctor  
Post Office Box 391  
Tallahassee, Florida 32302  
(904) 224-9115

Attorneys for Tampa Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail on this 7<sup>th</sup> day of February, 1992 to the following:

Mr. John W. McWhirter, Jr.  
McWhirter, Grandoff & Reeves  
Post Office Box 3350  
Tampa, Florida 33601  
(813) 224-0866

Mr. Andrew B. Jackson  
Post Office Box 2025  
Sebring, Florida 33871

Mr. K. Crandal McDougall  
Florida Power & Light Company  
9250 W. Flagler, St., Suite 6527  
Miami, Florida 33174

Mr. J. T. Blount  
Vice President, Law  
Florida Power & Light Company  
Post Office Box 029100  
Miami, Florida 33102-9100

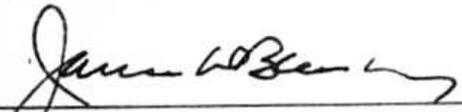
Mr. Robert V. Elias\*  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0863

Ms. Vicki G. Kaufman  
McWhirter, Grandoff & Reeves  
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Tallahassee, Florida 32301

Mr. Wilton R. Miller  
Bryant, Miller and Olive, P.A.  
201 South Monroe Street - Suite 500  
Tallahassee, Florida 32301

Mr. Richard Maenpaa, Manager  
Peace River Electric Cooperative, Inc.  
Post Office Box 1310  
Wauchula, Florida 33873

Mr. W. G. Walker  
Vice President, Regulatory Affairs  
Florida Power & Light Company  
810 First Florida Bank Building  
Tallahassee, Florida 32301

  
\_\_\_\_\_  
ATTORNEY

\*By hand delivery

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D. C. 20426

Docket No. ER92-234-000

JAN 29 1992

Gallagher, Boland, Meiburger and Brosnan  
Attention: Mr. Peter C. Lesch  
1000 Vermont Avenue, N.W.  
Suite 1100  
Washington, D.C. 20005-4903

Dear Mr. Lesch:

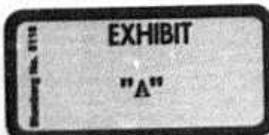
By letter dated December 19, 1991, you submitted for filing with the Commission, on behalf of Tampa Electric Company, an amendment (Service Schedule D) to your interchange agreement with Seminole Electric Cooperative, Inc. (Seminole) and a letter agreement providing for the sale of capacity and energy to Seminole. Authority to act on this matter is delegated to the Director, Division of Applications, under Section 375.308 of the Commission's Regulations; pursuant to Section 375.308(a)(1), your submittal is accepted for filing and designated as shown on the Enclosure.

Notice of your filing was published in the Federal Register with comments, protests, or interventions due on or before January 17, 1992. No comments, protests, or interventions were filed.

Good cause is shown for granting waiver of the notice requirements pursuant to Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder; therefore, Service Schedule D shall become effective on February 21, 1992, and the letter agreement shall become effective upon commencement of service. Please advise the Commission of the date service commences.

This acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Tampa Electric Company.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR 385.713.



Gallagher, Boland, Meiburger and Brosnan

This acceptance for filing terminates Docket No. ER92-234-000.

Sincerely,



Donald J. Gelinas, Director  
Division of Applications

Enclosure

cc: Seminole Electric Cooperative, Inc.  
Attention: Mr. Timothy S. Woodbury  
Director of Rates and  
Corporate Planning  
Post Office Box 272000  
Tampa, Florida 33688-2000

Enclosure

Tampa Electric Company  
Docket No. ER92-234-000  
Rate Schedule Designations

<u>Designation</u>	<u>Description</u>
(1) Supplement No. 6 to Rate Schedule FERC No. 22	Service Schedule D
(2) Supplement No. 1 to Supplement No. 6 to Rate Schedule FERC No. 22	Letter Agreement