

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination of )  
Need for an Electrical Power Plant ) DOCKET NO. 991462-EU  
in Okeechobee County by Okeechobee )  
Generating Company, L.L.C. ) FILED: February 4, 2000

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OKEECHOBEE GENERATING COMPANY'S MOTION TO COMPEL TAMPA ELECTRIC COMPANY TO RESPOND TO DISCOVERY REQUESTS

Okeechobee Generating Company, L.L.C. ("OGC"), pursuant to Uniform Rule 28-106.206, Florida Administrative Code ("F.A.C.") and Rule 1.380, Florida Rules of Civil Procedure ("F.R.C.P.") hereby moves to compel Tampa Electric Company ("TECO") to respond to OGC's First Request for Production of Documents, First Request for Admissions, and First Set of Interrogatories. As grounds for this Motion to Compel, OGC states as follows.

SUMMARY

1. On November 5, 1999, OGC propounded its First Request for Admissions (Nos. 1-43) ("OGC's Requests for Admissions"), First Set of Interrogatories (Nos. 1-46) ("OGC's Interrogatories") and First Request for Production of Documents (Nos. 1-25) ("OGC's Requests to Produce") to TECO (collectively referred to as "OGC's Discovery Requests"). On November 15, 1999, TECO filed objections to each of OGC's Discovery Requests. To date, TECO has not filed a single response to OGC's Discovery Requests.

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2. TECO chose of its own volition to petition to intervene in this docket.<sup>1</sup> By order dated November 4, 1999 the Florida Public Service Commission ("FPSC" or "Commission") determined that TECO had alleged sufficient facts to establish its standing to participate as a full party in this docket. In re: Petition for Determination of Need for an Electrical Power Plant in Okeechobee County by Okeechobee Generating Company, L.L.C., 99 F.P.S.C. 11:18, 11:19 (1999). TECO states that it "intends to fully participate in this proceeding." TECO's Objections to OGC's First Set of Interrogatories at 1 ("TECO's Objections to Interrogatories"). (Similar language appears in TECO's Objections to OGC's First Request for Admissions at 1 ("TECO's Objections to Admissions"); and TECO's Objections to OGC's First Request for Production of Documents at 1 ("TECO's Objections to Production of Documents")). As a party in this docket, TECO is subject to all applicable rules, including the rules governing discovery set forth in the Florida Rules of Civil Procedure.<sup>2</sup> However, instead of complying with OGC's Discovery Requests, TECO has opted to stonewall by refusing to respond to a single discovery request. TECO's refusal to respond is based on its erroneous belief that because it is not the applicant in this proceeding, no discovery is proper. The

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<sup>1</sup>TECO could have decided to identify itself as an interested person, but it chose not to do so.

<sup>2</sup>The Florida Rules of Civil Procedure are specifically made applicable to this proceeding pursuant to Rule 28-106.206, F.A.C.

Commission should not tolerate this callous disregard by TECO of the rules of discovery. If TECO does not want to comply with the obligations of a party, it should withdraw its Petition for Leave to Intervene ("TECO's Petition to Intervene"). OGC will not object to such a withdrawal. In short, the Commission should not tolerate TECO's unfounded efforts to evade its responsibilities and the rules, and should grant OGC's Motion to Compel.

### PRELIMINARY MATTERS AND GENERAL OBJECTIONS

#### Scope of Discovery.

3. The Florida Rules of Civil Procedure provide that a party may obtain discovery on any matter that is not privileged if the matter is relevant to the subject matter of the pending action, regardless whether the discovery relates to a claim or defense of any party. The primary limiting factor on the scope of discovery is that the information sought must be reasonably calculated to lead to the discovery of admissible evidence. Rule 1.280(b), F.R.C.P.; Simons v. Jorg, 384 So.2d 1362 (Fla. 2d DCA 1980).

4. With respect to requests for admissions, the Florida Rules of Civil Procedure provide that a party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 1.280(b), F.R.C.P., that relate to statements or opinions of fact or the application of law to fact. See Rule 1.370, F.R.C.P. A matter is deemed admitted unless the party to whom the request is directed serves a written answer or

objection. Florida Bar v. Solomon, 589 So.2d 286 (Fla. 1991). The party who has requested the admissions may move to determine the sufficiency of the answers or objections. As a general rule, any matter admitted is conclusively established for hearing. Rule 1.370(b), F.R.C.P. Inadequate reasons for neither admitting nor denying requests for admissions are the equivalent of an admission. Rule 1.370, F.R.C.P. (Authors' Comment 1967). If a party interposes inadequate objections, the tribunal shall order that appropriate answers be supplied. Rule 1.370(a), F.R.C.P.

5. The Florida Rules of Civil Procedure authorize a party to propound interrogatories on any other party. Interrogatories may relate to any matter that can be inquired into under Rule 1.280(b), F.R.C.P. Interrogatories are not objectionable merely because an answer involves an opinion that relates to fact or calls for a conclusion or asks for information not within the personal knowledge of the party. A party must respond by giving such information that it has and stating the source of the information. Rule 1.340(b), F.R.C.P. Each interrogatory must be answered separately and fully, in writing under oath, unless the responding party timely objects. If an objection is made, the grounds for the objection must be stated. Rule 1.340(a), F.R.C.P.

6. The Florida Rules of Civil Procedure also provide that any party may request the production of documents that constitute matters within the scope of Rule 1.280(b), F.R.C.P., that are in

the possession or control of the party to whom the request is directed. Rule 1.350(a), F.R.C.P. When producing documents, the producing party must either produce them as they are kept in the usual course of business or identify them to correspond with the categories in the request. Rule 1.350(b), F.R.C.P.

TECO's General Objections.

7. TECO raises general objections to all of OGC's Discovery Requests alleging that they are irrelevant and that OGC's Discovery Requests lack a nexus to facts which only OGC must adduce in this proceeding. TECO argues that while it intends to participate fully in this proceeding, it has no burden of proof nor any burden of coming forward with evidence concerning its standing to participate in this proceeding. Under TECO's theory of the case, only OGC has a burden of proof in this proceeding.

8. TECO is wrong. OGC's is not the only burden of proof in this proceeding. To have standing to intervene under Chapter 120, Florida Statutes ("F.S."), a putative party must comply with a two step process. First, the putative party must include in its pleadings sufficient allegations demonstrating that it will be substantially affected by the proposed agency action. See Friends of Matanzas v. Department of Environmental Protection, 729 So.2d 437, 439 (Fla. 5th DCA 1999) (to be entitled to an administrative hearing a party must "allege and establish" that its substantial interests will be affected); see also Agrico Chemical Co. v.

Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981). The allegations of substantial injury contained in the petition to intervene are subject to a motion to dismiss challenging whether, as a matter of law, and assuming all facts to be well pled, the party has alleged a valid basis for standing. If the putative party survives this first hurdle, the analysis is not over. Just as with any factual allegation, the party then must "prove up" its allegations of standing at the final hearing. In this case, TECO's Petition to Intervene contains allegations that TECO's substantial interests will be determined by this proceeding.<sup>3</sup> In the interest of administrative efficiency, OGC chose not to file a motion to dismiss challenging the legal bases of TECO's allegations. However, just as OGC must prove up the factual allegations in its Petition for Determination of Need,<sup>4</sup> TECO must also prove up the factual allegations in its Petition to Intervene. Sufficient allegations of standing permit TECO to participate in this proceeding as a party. Those allegations do not relieve TECO of the proofs necessary to maintain its standing. "Having pled sufficient facts to legally justify . . . intervention

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<sup>3</sup>For example, TECO has alleged that its ability to plan, build and operate its generation and transmission systems is subject to determination in this proceeding. TECO's Petition to Intervene para. 11.

<sup>4</sup>Applying TECO's argument to OGC's Petition for Determination of Need leads to the absurd result that all the factual allegations contained in OGC's Petition for Determination of Need are proven merely because they are alleged.

. . . in an on-going case, a party must then establish at hearing an adequate record foundation to prove up its allegations (and standing) under the relevant statute." Florida Audubon Society v. Department of Environmental Regulation, 1986 WL 32870, at \*22 (Fla. Dep't Env'tl. Reg. 1986).<sup>5</sup> Thus, contrary to TECO's assertions, TECO does have the burden of going forward with evidence in support of allegations contained in its pleadings. OGC's Discovery Requests are designed to test the accuracy of those assertions.

9. TECO's argument that OGC's Discovery Requests are objectionable because the requests lack a "nexus" to facts that only OGC must prove in this case is contrary to law. In its Petition to Intervene, TECO alleged numerous, unsubstantiated, adverse impacts resulting from the Okeechobee Generating Project ("Project"). As such, TECO brought those issues within the scope of inquiry of this proceeding. In Krypton Broadcasting of Jacksonville, Inc. v. MGM-Pathe Communications Co., 629 So.2d 852 (Fla. 1st DCA 1994), disapproved on other grounds, Allstate Insurance Co. v. Langston, 655 So.2d 91 (Fla. 1995), the court found that discovery properly relates to all pleadings and was not

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<sup>5</sup>See also Florida Power Corp. v. Dep't of Env'tl. Protection, 1999 WL 166086 at \*1 (Fla. Dep't Env'tl. Protection 1999) (petitions to intervene granted subject to intervenors providing proof of standing at the final hearing); Jacksonville Shipyards, Inc. v. Florida Dep't of Env'tl. Reg., 1987 WL 62036 at \*21 (Fla. Dep't Env'tl. Reg. 1987) (merely alleging an interest in petition for intervention but failing to prove up allegation at hearing is not sufficient).

limited to issues raised in an amended complaint. The court stated:

Thus, the answer, affirmative defenses, and counter-claims brought numerous additional issues into litigation.

At the outset, we reject Krypton's argument that the court must limit its consideration to the issues raised in the amended complaint in determining the propriety of MGM's discovery requests. It is axiomatic that information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings.

Id. at 854 (emphasis supplied) (citing Becker Metals Corp. v. West Florida Scrap Metals, 407 So.2d 380, 381 (Fla. 1st DCA 1981)). Thus, all matters raised by TECO in its Petition to Intervene are the proper subject of discovery by OGC. OGC must be given an opportunity to test TECO's allegations.

10. Accordingly, OGC moves to compel TECO to respond to all of OGC's Discovery Requests as set forth herein over TECO's general objections.

#### **REQUESTS FOR ADMISSIONS**

11. TECO specifically objects to all of OGC's Requests for Admissions on the grounds that they are irrelevant and argumentative. TECO's Objections to Admissions at 3-5. TECO's relevance and argumentativeness objections are without merit. Many of OGC's Requests for Admissions are relevant because they address various aspects of wholesale power sales. For example, Requests for Admissions 8-10, 12, 16 and 17 ask:

8. With respect to its separated wholesale



sales, TECO retains the right to sell power outside the State of Florida any time it is in the economic interest of TECO to do so.

9. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to prescribe uniform systems and classifications of accounts.

10. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to prescribe a rate structure.

12. With respect to its separated wholesale sales, TECO does not engage in end-use conservation programs.

16. With respect to its separated wholesale sales, TECO's shareholders retain the proceeds of the sales in the same manner investors of merchant plants retain the proceeds of their sales.

17. Other than sales made through the Florida Energy Broker, when TECO makes non-separated wholesale sales, the benefit of the proceeds in excess of costs associated with those sales flow back to its ratepayers because the ratepayers bear the cost responsibility of the investment used to make those sales.

This docket is a need determination proceeding for a proposed electrical power plant which will sell electricity at wholesale in Peninsular Florida. Discovery regarding wholesale power sales is a core factual issue in this proceeding. Indeed, TECO has used the fact that it is a "utility purchaser of wholesale power" as a basis for its argument that it has standing to intervene in this docket. TECO's Petition to Intervene para. 18. It is disingenuous for TECO

to argue that it has an interest in this proceeding because it is a wholesale power purchaser and then deny the relevance of discovery on that very subject.

12. Those of OGC's Requests for Admissions which address subjects other than wholesale power are relevant because they are founded on TECO's Petition to Intervene. The Requests for Admissions seek the truth of assertions made by TECO. For example, TECO alleges:

The Petitioners' [sic] proposal may reduce natural gas availability within Florida  
. . . .

TECO's Petition to Intervene para. 17. OGC's Request for Admission number 32 asks TECO to admit that:

32. A second, major trans-Florida gas pipeline will benefit the State of Florida by enhancing Florida's gas supply reliability.

Clearly, the reliability of gas supply in Florida is relevant to this proceeding to determine the need for a gas-fired electrical power plant. TECO also alleges that:

The Petitioners' [sic] proposal . . . will adversely affect the ability of Tampa Electric and other utilities to meet their service obligations.

TECO's Petition to Intervene para. 17. Requests for Admission 21 and 22 seek admissions on how the Project may assist TECO in meeting its service obligations.

21. If TECO, in its sole discretion, determines that the Project is a cost-effective and reliable supply resource and if

mutually agreeable terms and conditions for the purchase and sale of capacity and energy are reached by TECO and OGC, there is no impediment to TECO's contracting to purchase capacity and energy from the Project on a firm, long-term basis.

22. If TECO entered into a long-term, firm contractual commitment for the purchase of power from the Project, TECO can include the amount of the purchased power in its projected reserve margins.

The examples quoted herein clearly demonstrate the relevance of OGC's Requests for Admissions in this proceeding and are representative of all of OGC's Requests for Admissions. A copy of OGC's Requests for Admissions propounded on TECO is attached hereto as Exhibit "A". An examination of the document confirms that all of OGC's Requests for Admissions seek the truth of matters within the scope of Rule 1.280(b), F.R.C.P. Accordingly, OGC moves that TECO's relevance objection to OGC's Requests for Admissions numbers 1-43 be found insufficient and the Requests for Admissions be answered within ten days of the decision finding TECO's objections insufficient.

13. TECO further objects to OGC's Requests for Admissions numbers 1-20, 24, 34, 35, and 38-40 on the grounds that the information requested is a matter of public record. TECO's public records objection is not a valid basis for its refusal to respond to the Requests for Admissions. OGC's Requests for Admissions are either true or they are not and the fact that the requests may address information in the public record is not germane to their

propriety as requests for admissions. Under the Florida Rules of Civil Procedure, even public records are subject to interpretation. The Requests for Admissions properly seek the truth of matters within the scope of Rule 1.280(b), F.R.C.P., and requiring TECO to respond will eliminate unnecessary proofs at hearing. Accordingly, OGC moves that TECO's public records objection to OGC's Requests for Admissions numbers 1-20, 24, 34, 35, and 38-40, be found insufficient and the Requests for Admissions be answered within ten days of the decision denying TECO's objections.

14. TECO objects to OGC's Requests for Admissions numbers 9-11 and 24-27 on the basis that they call for opinions on matters of law which, TECO asserts, OGC can develop for itself. To the contrary, the Requests for Admissions properly seek the application of law to fact--inquiries which are expressly permitted under Rule 1.370, F.R.C.P., which provides:

A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of rule 1.280(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact . . . .

Rule 1.370(a), F.R.C.P. (emphasis supplied). For example, Request for Admission number 11 asks:

11. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to require electric power conservation by TECO.

This Request for Admission clearly seeks TECO's position regarding

the application of law (the question of whether the Commission has jurisdiction) to fact (the specific circumstances of TECO's wholesale sales). Accordingly, TECO's legal opinion objection should also be rejected and Requests for Admissions 9-11 and 24-27 be answered within ten days of the decision denying TECO's objections.

15. In sum, the purpose of all of OGC's Requests for Admissions is to eliminate issues raised by TECO's claims opposing OGC's need determination, claims which are, at this point in time, based only on TECO's unproven, unsubstantiated allegations. In so doing, OGC hopes to construct a level and focused playing field for analysis of OGC's Petition for Determination of Need by this Commission. OGC's Discovery Requests simplify the issues in this case and help achieve a balanced search for the truth. Elkins v. Syken, 672 So.2d 517, 522 (Fla. 1996). TECO has failed to establish any sufficient reason for any of its objections to OGC's Requests for Admissions. Accordingly, pursuant to Rule 1.370(a), F.R.C.P., OGC moves the Commission to determine that TECO's objections are insufficient and that OGC's Requests for Admissions numbers 1-43 must be answered promptly.

#### **INTERROGATORIES**

16. TECO specifically objects to all of OGC's Interrogatories, numbers 1-46, on the basis of relevance. TECO's Objections to Interrogatories at 4-8. TECO's relevance objection

is unfounded and fallacious. With respect to Interrogatories 1-16, TECO alleges that the interrogatories are "nothing more than a tortured and unnecessary march" through the allegations in its Petition to Intervene. TECO's Objections to Interrogatories at 4. TECO misunderstands its burden as a party in this proceeding. The information sought in OGC's Interrogatories is proper because it relates to issues framed by TECO in its Petition to Intervene. See Krypton, 629 So.2d at 854. OGC's Interrogatories addressing the allegations in TECO's Petition to Intervene are both necessary and relevant to this proceeding. For example, TECO alleges that its ability to plan, build and secure certification for its transmission and generation facilities may be adversely affected by the Project.

If the Commission determines, premised upon "Peninsular Florida's" need, that Okeechobee has met the statutory criteria under Section 403.519, Florida Statutes, then Tampa Electric's ability to (1) plan its transmission system to meet its customers' needs, (2) plan its generation additions to meet its customers' needs, (3) build and operate transmission facilities to meet customers' needs, (4) build and operate generation to meet its customers' needs, and (5) secure certification of transmission and generating facilities necessary to discharge its obligation to serve and meet its customers' needs may be adversely affected.

TECO's Petition to Intervene para. 15. OGC's Interrogatories 1-8 specifically inquire into each of TECO's allegations contained in paragraph 15. The Interrogatories ask:

1. Please describe in detail the manner in which TECO believes its ability to plan its transmission system to meet its customers' needs will be adversely affected by the Project.

2. Please describe in detail the manner in which TECO believes its ability to plan its generation additions to meet its customers' needs will be adversely affected by the Project.

3. Please describe in detail the manner in which TECO believes its ability to build transmission facilities to meet its customers' needs will be adversely affected by the Project.

4. Please describe in detail the manner in which TECO believes its ability to operate transmission facilities to meet its customers' needs will be adversely affected by the Project.

5. Please describe in detail the manner in which TECO believes its ability to build generation to meet its customers' needs will be adversely affected by the Project.

6. Please describe in detail the manner in which TECO believes its ability to operate generation to meet its customers' needs will be adversely affected by the Project.

7. Please describe in detail the manner in which TECO believes its ability to secure certification of transmission facilities necessary to discharge its obligation to serve and meet its customers' needs will be adversely affected by the Project.

8. Please describe in detail the manner in which TECO believes its ability to secure certification of generating facilities necessary to discharge its obligation to serve and meet its customers' needs will be adversely affected by the Project.

It cannot seriously be disputed that these Interrogatories are directly relevant to TECO's assertions regarding adverse impacts to TECO's transmission and generation. The Interrogatories test the validity of TECO's unsubstantiated allegations in its Petition to Intervene and are, therefore, relevant and material. Similarly, Interrogatories 9-13 are so closely related to TECO's Petition to Intervene, that the paragraphs from which the questions were derived are given as a point of reference. For example, Interrogatory 13 asks:

13. Please explain in detail how TECO believes that the construction of the Project will introduce "tremendous uncertainty" in the planning processes for TECO as alleged in paragraph 23 of its Petition to Intervene.

Likewise, Interrogatories 14-16 request TECO to specifically describe the detrimental impacts the Project is alleged to have on TECO's ratepayers, shareholders and planning processes. Allegations of detrimental impacts appear in paragraphs 9, 15 and 23 of TECO's Petition to Intervene. The Interrogatories ask:

14. Please describe in detail the detrimental impacts that TECO believes the Project will have on TECO's shareholders.

15. Please describe in detail the detrimental impacts that TECO believes the Project will have on TECO's ratepayers.

16. Please describe in detail the detrimental impacts that TECO believes the Project will have on TECO's short-term and long-term planning processes.

In short, TECO is correct that Interrogatories 1-16 track the



allegations in TECO's Petition to Intervene. TECO is incorrect regarding the relevance of the Interrogatories. Interrogatories derived from allegations made in opposition to the Project are more than just relevant in this proceeding; they are essential because they comprise fundamental inquiries into the need for the Project and TECO's standing to challenge that need. As such, TECO's relevance objection to Interrogatories 1-16 should be summarily rejected.

17. TECO objects, without explanation, to Interrogatory 26 as being irrelevant as well as burdensome and vague. Interrogatory 26 asks:

26. In the last ten years, has TECO ever experienced transmission line exceedences? If the answer is yes, please list all such exceedence events, the magnitude of the exceedences and actions, if any, taken by TECO to remedy the exceedences.

As previously demonstrated, TECO has alleged a host of evils that will befall its transmission facilities if the Project is constructed. Interrogatory 26 merely seeks to establish the character of TECO's current transmission operating conditions in an effort to evaluate TECO's allegations of adverse impacts to its transmission system. Interrogatory 26 is clearly relevant to the subject matter of this proceeding.

18. Interrogatories 28-30 relate to wholesale power sales--a central factual issue in this docket. The Interrogatories ask:

28. What percentage of TECO's wholesale sales

for the years 1995 through 1999 were made to utilities in Florida?

29. What percentage of TECO's wholesale sales for the years 1995 through 1999 were made to power marketers?

30. What percentage of TECO's wholesale sales for the years 1995 through 1999 were made to utilities outside Florida?

TECO bases one of its allegations in support of its standing on the fact that TECO is a wholesale purchaser of power. Inquiry into the circumstances of TECO's wholesale power transactions is elemental to OGC's assessment of how, if at all, the Project may impact TECO. TECO's relevance argument with respect to these Interrogatories is wholly without merit and should be rejected.

19. TECO objects to Interrogatories 31 and 32 on the grounds that they are "completely irrelevant" and call for disclosure of confidential or commercially sensitive information. TECO's Objections to Interrogatories at 7. Interrogatories 31 and 32 ask whether TECO or its affiliate or parent corporations currently own or plan to develop merchant plants outside Florida. These Interrogatories are relevant. TECO has asserted that a host of plagues will result from the Project. If TECO is developing merchant plants in other states, then it is fair for OGC and the Commission to inquire as to whether TECO's merchant plant activities visit similar plagues in the states where TECO pursues such activities. TECO should answer to the extent practical with

non-confidential information--OGC is not seeking confidential, proprietary information from TECO.

20. TECO's objections to Interrogatories 33-36 on the basis of mootness and relevance demonstrate blatant abuse of the discovery process and bad faith. Interrogatory 33 asks:

33. Identify each person that prepared or assisted in the preparation of the answers to these interrogatories and state which specific answers(s) each person prepared or assisted in preparing.

The answer to this interrogatory is not optional--it is required by Rule 1.340(a), F.R.C.P., which states that: "Each interrogatory shall be answered separately and fully in writing under oath . . . ." Unless all of TECO's objections to OGC's Interrogatories are sustained, TECO must respond to this Interrogatory. In addition, Interrogatories 34, 35 and 36 merely ask TECO to identify expert and non-expert witnesses and documents TECO intends to introduce at hearing. If TECO does not intend to call any witnesses or to introduce documents, it should simply so state in its answers. TECO has no valid basis for objecting to these standard Interrogatories rather than answering them. Apparently, TECO found it more important to make a statement regarding its lack of burden of proof than to demonstrate even a scintilla of good faith in responding to OGC's discovery. TECO should be compelled to respond to Interrogatories numbers 33-36.

21. TECO's objection to Interrogatories 38-46 on grounds of

relevance is similarly without merit. Interrogatories 38-42 seek information regarding TECO's transmission system. TECO has injected issues related to the Project's alleged adverse impacts to the planning, building and operation of its transmission system into this proceeding. Paragraphs 11, 15, 17, and 23 of TECO's Petition for Intervention all include allegations regarding TECO's transmission system. For example, TECO states:

The Petitioners' [sic] proposal may reduce natural gas availability within Florida, result in the uneconomic duplication of generating facilities, and utilize transmission facilities which will adversely affect the ability of Tampa Electric and other utilities to meet their service obligations. These consequences must be addressed and warrant Tampa Electric's intervention.

TECO's Petition to Intervene para. 17 (emphasis added). It is precisely TECO's alleged "consequences" that OGC is seeking to address through its Discovery Requests. OGC seeks specific transmission facility information in Interrogatories 1, 3, 4, 7, 12, 18, 20, 26 and 37-46. For example, Interrogatories 18, 26 and 42-44 ask:

18. Does TECO plan its transmission system taking into consideration the existing and planned transmission facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

26. In the last ten years, has TECO ever experienced transmission line exceedences? If the answer is yes, please list all such exceedence events, the magnitude of the exceedences and actions, if any, taken by TECO to remedy the exceedences.

42. Please identify other power producers that have requested transmission service from TECO and all of TECO's resource additions/retirements through winter 2003.

43. Please identify all of TECO's transmission line and transformer additions/retirements 138 kV and above, through winter 2003.

44. Please identify any additions or changes to TECO's Proposed Transmission Lines, 1999-2008 as outlined in the FRCC 1999 Regional Load & Resource Plan, dated July 1999.

OGC's Interrogatories 1, 3, 4, 7, 12, 18, 20, 26 and 37-46 all seek information concerning transmission issues which is directly relevant to TECO's allegations of adverse consequences. To deny OGC the opportunity to discover the bases of TECO's allegations would constitute a denial of due process. TECO's relevance objection to Interrogatories 38-46 as well as Interrogatories 1, 3, 4, 7, 12, 18, 20, 26 and 37 are specious and TECO should be compelled to substantiate the allegations in its Petition to Intervene and respond to OGC's Discovery Requests.

22. In sum, all of TECO's relevance objections lack merit and should be rejected. As is unequivocally demonstrated herein, OGC's Interrogatories are predicated on TECO's Petition to Intervene and are relevant because they seek the truth of the assertions made by TECO. In the interest of brevity, OGC has provided a representative cross section of its Interrogatories in order to demonstrate the relevance of all the Interrogatories. The examples should not be considered as limiting OGC's Motion to Compel. A

copy of OGC's Interrogatories (Nos. 1-46) to TECO is attached hereto as Exhibit "B". Even a cursory examination of the document demonstrates the relevance of all of OGC's Interrogatories. Accordingly, OGC moves to compel TECO to respond to all of OGC's Interrogatories numbers 1-46.

23. TECO's public records objection to OGC's Interrogatories numbers 1-16 asserts that TECO's positions on the questions posed by OGC are ascertainable from this docket and several other recent Commission dockets.<sup>6</sup> This objection can only have been made with utter disregard for the content of OGC's Interrogatories. It is precisely TECO's position in this docket that OGC's Interrogatories properly seek to establish. While it is true that the Duke New Smyrna and Duke/IMC Agrico dockets may have legal issues in common with this docket, the factual issues are entirely separate and distinct. For example, OGC's Interrogatory number 5 asks:

5. Please describe in detail the manner in which TECO believes its ability to build generation to meet its customers' needs will be adversely affected by the Project.

OGC defines "Project" to mean the Okeechobee Generating Project, not the projects at issue in the Duke New Smyrna or IMC Agrico

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<sup>6</sup>See In Re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of New Smyrna Beach, Florida, and Duke Energy New Smyrna Beach Power Company, Ltd., 99 F.P.S.C. 3:401; 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., 98 F.P.S.C. 1:320.

cases. OGC's Interrogatories at 2. Clearly, TECO's public records objection is not remotely related to Interrogatories numbers 1-16 and apparently has been inserted merely to stonewall OGC's legitimate discovery attempts. For these reasons, the Commission should reject TECO's public records objection and compel TECO to respond.

24. TECO's objection to Interrogatories 1-16, 28-30, and 38-41 on grounds that the Interrogatories require TECO to compile and organize information, without more, is not a valid basis for refusing to respond to OGC's Interrogatories. As a preliminary matter, none of OGC's Discovery Requests requires TECO to provide responses in any form other than that which TECO maintains the information in the usual course of business. For example, Interrogatory number 16 asks:

16. Please describe in detail the detrimental impacts that TECO believes that the Project will have on TECO's short-term and long-term planning processes.

Clearly, this interrogatory simply asks TECO to describe in detail adverse impacts the Project is alleged to have on TECO's planning processes. The Interrogatory does not ask TECO to compile anything. Moreover, TECO has failed to identify the amount, type, or content of the information it alleges would be burdensome to compile. TECO has the burden to quantify, for this Commission, the substantive support for its objections. First City Developments of Florida, Inc. v. Hallmark of Hollywood Condominium Assoc., Inc.,

545 So.2d 502, 503 (Fla. 1st DCA 1989) (party objecting to discovery must quantify the manner in which discovery might be overly broad or burdensome). Even if TECO can sustain its burden of demonstrating the factual basis for its objection, it still must produce its records to OGC from which the answers to the Interrogatories may be derived so long as the burden of deriving the answer is substantially the same for OGC as it is for TECO. See Rule 1.340(c), F.R.C.P.; see also Slatnick v. Leadership Housing Systems of Florida, Inc. 368 So.2d 78 (Fla. 4th DCA 1979) (offer to open records was an acceptable alternative to answering 2,300 pages of interrogatories). As such, TECO's conclusory and improper objection to Interrogatories 1-16, 28-30 and 38-41 that it must compile information should be rejected and TECO should be compelled to respond.

25. TECO's objection that OGC's Interrogatories 1-16 are argumentative is also wholly without merit. The fallacy of TECO's argumentativeness objection is illustrated by the plain language of the Interrogatories which, as previously demonstrated, were derived directly from TECO's Petition to Intervene. For example, Interrogatory 11 asks:

11. In paragraph 19 of its Petition to Intervene, TECO alleges that the displacement of electrical energy by the Project may have an adverse impact on TECO which is planning to construct additional gas-fired generating capacity during the time frames addressed in the Petition. How does TECO believe that the construction by OGC of gas-fired generating



capacity adversely would affect TECO's planned construction of gas-fired generating capacity?

OGC fails to understand how questions seeking clarification and explanation of allegations made by an opposing party could possibly be perceived as argumentative. TECO has the burden of affirmatively demonstrating the validity of its objections and it has not met that burden. See First City Developments, 545 So.2d at 503; Carson v. Fort Lauderdale, 173 So.2d 743, 744 (Fla. 2d DCA 1965) (burden of proving validity of objections to discovery is upon objecting party). Broad assertions of catch phrases as objections, without substantive support, are meaningless. First City Developments, 545 So.2d at 503. As such, TECO's argumentativeness objections should be rejected and TECO should be compelled to respond to Interrogatories numbers 1-16.

26. TECO objects to Interrogatories numbers 17-20, 31, 32, and 42 with the assertion that responding to them "might" require the disclosure of confidential or commercially sensitive information. TECO's Objections to Interrogatories at 5-8. OGC has no desire to require TECO to publicly disclose confidential or commercially sensitive information. Depending on the information at issue, it might be appropriate for TECO to furnish the information under a confidential protective order or, for extremely sensitive competitive information, not to furnish it at all. However, TECO cannot unilaterally refuse to disclose information that is merely potentially confidential. TECO must affirmatively

show, and the Commission must find, that the discovery will require disclosure of proprietary, confidential, business information. See Section 366.093(2), F.S. Rule 25-22.006, F.A.C., implementing Section 366.093(2), provides:

In any formal proceeding before the Commission, any utility or other person may request a protective order protecting proprietary confidential business information from discovery. Upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure.

Rule 25-22.006(6)(a), F.A.C. (emphasis added). TECO can seek to limit the disclosure of specific confidential information through an affirmative showing in accordance with the statute and rules. However, simply averring that general information might be confidential is insufficient and TECO should, at a minimum, be compelled to answer Interrogatories numbers 17-20, 31, 32, and 42 to the extent possible with non-privileged, non-confidential information and to identify the confidential information it is withholding. At this point, TECO has furnished no explanation whatsoever as to what, if any, confidential or privileged information exists.

27. TECO asserts boilerplate vagueness and ambiguity objections to OGC's Interrogatories numbers 18-22, 27 and 37. As support for its vagueness objections, TECO quotes, out of context,

various words or phrases intended to limit or clarify the Interrogatories. For example, TECO states that the phrase "taking into consideration" renders Interrogatory number 19 vague and unanswerable. Interrogatory number 19 states:

19. Does TECO plan its generation system taking into consideration the existing and planned generation facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

The Interrogatory seeks a "yes" or "no" answer and a follow-up explanation. Nothing about Interrogatory 19 or Interrogatories 18, 20, 21, 22, 27 or 37 is vague. On the contrary, had OGC not included the limiting language, TECO might well have objected on the grounds of overbreadth. See Palmer v. Servis, 393 So.2d 653, 654 (Fla. 5th DCA 1981) (blanket request for general category of items is insufficient.) Accordingly, TECO should be compelled to answer Interrogatories 18-22, 27 and 37.

28. In addition to its standard boilerplate objections, TECO objects to Interrogatory numbers 24 and 25 by stating that the lack of temporal element is a fatal flaw. The questions seek information regarding whether TECO is a net buyer or net seller of wholesale sales. OGC disagrees that the temporal element is a fatal flaw but agrees to limit the questions to the five year period from 1995-1999. TECO should be compelled to answer Interrogatories 24 and 25 based on this limited time frame.

29. In sum, the purpose of all of OGC's Interrogatories is to

test the validity of TECO's allegations contained in its Petition to Intervene and to discover facts relevant to the issues in this proceeding. The specific examples given herein of Interrogatories are representative of all of OGC's Interrogatories. On their face, OGC's Interrogatories clearly demonstrate that TECO's objections are wholly without merit and that the Interrogatories are relevant, material and fundamentally necessary to OGC's proofs in this docket. Accordingly, OGC moves to compel answers to Interrogatories 1-23 and 26-46 as propounded and Interrogatories 24 and 25 as revised.

#### REQUESTS TO PRODUCE

30. TECO advances five conclusory objections to OGC's Requests to Produce numbers 1-24. The objections are that the Requests to Produce are irrelevant, unnecessarily broad, argumentative, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. TECO makes no attempt to explain or substantiate any of these objections. TECO's objections are clearly erroneous. The relevance of the Requests to Produce cannot seriously be disputed. In its Petition to Intervene, TECO asserts a host of adverse impacts that will occur if the Project is built. The documents requested by OGC all relate to TECO's allegations and all are within the scope of Rule 1.280(b), F.R.C.P. Requests to Produce 2, 10 and 15 are instructive. The Requests to Produce seek:

2. All documents which relate to, mention or otherwise reflect on TECO's long-term planning being adversely affected by the Project.

10. All documents which relate to, mention or otherwise reflect on whether, as evaluated by TECO, the detrimental impacts of the OGC Project would outweigh the benefits of the OGC Project.

15. All documents which relate to, mention or otherwise reflect on TECO's allegations that the Project does not constitute the most cost-effective means for any retail utility to meet its need for firm power resources.

These three Requests to Produce as well as Requests to Produce numbers 1, 3-9, 11-14, and 16-24 are relevant because the discovery relates to the issues framed in TECO's Petition to Intervene. Krypton 629 So.2d at 854. As such, TECO's relevance objections to Requests to Produce numbers 1-24 should be rejected and TECO should be compelled to respond.

31. TECO's objection on the ground that the Requests to Produce are unnecessarily broad should likewise be rejected. The Requests to Produce only seek information specifically related to the subject matter of this pending action. For example, a number of the Requests to Produce, including the following, seek information concerning wholesale power sales, a core factual issue in this proceeding.

4. All documents which relate to, mention or otherwise reflect on TECO contracting for energy in the wholesale market on an hourly basis during the last ten years.

16. All documents which relate to, mention or

otherwise reflect on the recovery of generation costs when TECO purchases power.  
20. All documents which relate to, mention or otherwise reflect on wholesale sales in Florida by TECO or by any of its affiliates.

To defend against the allegations raised by TECO in its Petition to Intervene, OGC must have access to the information upon which TECO is basing its allegations. The Requests to Produce are designed to enable OGC to evaluate pertinent information upon which TECO bases its claims. However, in an effort to expedite the discovery process, OGC agrees to limit the time period for Requests to Produce numbers 4-7 to the time period 1995 through 1999. With this modification, OGC moves the Commission to reject TECO's overbreadth argument and compel TECO to respond to Requests to Produce numbers 1-24.

32. TECO's argumentativeness objection to OGC's Requests to Produce fails for the same reasons it fails to support TECO's objections to OGC's Interrogatories. The plain words of the Requests to Produce illustrate their origin in the Petition to Intervene. The Requests to Produce seek clarification of issues raised by TECO. For example, Request to Produce number 11 seeks:

11. All documents which relate to, mention or otherwise reflect on whether the Project will absorb or divert natural gas from other power producers in the State, who are committed to serve customers in the State on a long-term basis.

This Request to Produce seeks information pertaining to TECO's allegations in paragraphs 17 and 23 of its Petition to Intervene

that the Project will reduce natural gas availability. Far from being argumentative, the Request to Produce is a highly germane follow-up to TECO's allegations. As such, TECO's objection on the ground of argumentativeness should be rejected and TECO should be compelled to respond to Requests to Produce numbers 1-24.

33. TECO's conclusory objection that the Requests to Produce are not reasonably calculated to lead to the discovery of admissible evidence is a red herring. All of the documents requested are relevant to this proceeding and all of the documents are calculated to lead to the discovery of admissible evidence. For example, in Request to Produce number 24, OGC seeks documents which relate to TECO's position, as OGC understands it, that the Project is not needed in Peninsular Florida:

24. Any and all documents that directly or indirectly indicate that the determination of need for OGC should not be issued by the PSC.

TECO should not be permitted to hide behind unfounded, boilerplate phrases as a means to shield it from its responsibility as a party in this proceeding. OGC has made good faith discovery requests in an effort to ascertain the truth of matters asserted by TECO and TECO has only obstructed and protracted the discovery process. Accordingly, OGC moves the Commission to compel TECO to respond to Requests to Produce numbers 1-24.

34. In addition to the failure of TECO's conclusory objections on the merits as demonstrated herein, TECO's objections

on these grounds should be rejected because TECO has failed to meet its burden of affirmatively demonstrating their validity. See First City Developments, 545 So.2d at 503 (party objecting to discovery as overbroad or burdensome is required to show that the volume of documents, number of man hours required in their production, or some other quantitative factor made it so); Carson, 173 So.2d at 744 (burden of proving validity of objection is on the objecting party). TECO's obstructionism of the discovery process and bad faith noncompliance with the Florida Rules of Civil Procedure should not be tolerated by the Commission.

35. TECO objects to OGC's Requests to Produce numbers 1-3 as being moot because, TECO alleges, the documents "pertain to Tampa Electric's standing to intervene." TECO's Objections to Production of Documents at 4. TECO is correct that Requests to Produce numbers 1-3 relate to adverse impacts alleged by TECO in its Petition to Intervene. For example, Document Request number 3 seeks:

3. All documents which relate to, mention or otherwise reflect on TECO's ability to serve its retail customers being impaired by capacity from Merchant Plants being available for purchase by TECO or for purchase by other retail-servicing utilities in Peninsular Florida.

TECO is incorrect in stating that the subject of its standing is moot. Allegations sufficient to establish standing do not relieve TECO of the proofs necessary to maintain its standing. Florida



Audubon Society, 1986 WL 32870 at \*22. TECO must establish an adequate record foundation to prove up its allegations of standing and OGC's Requests to Produce are carefully tailored to test those allegations. As such, TECO should be compelled to respond to OGC's Requests to Produce numbers 1-3.

36. TECO further objects to Requests to Produce numbers 4-8, 14, 15, 16, 20 and 21 on the basis that they may require disclosure of confidential, privileged or commercially sensitive information. As discussed in paragraph 26 hereof, TECO cannot unilaterally refuse to disclose information that is merely potentially confidential. TECO must affirmatively demonstrate, and the Commission must find, that the discovery will require disclosure of proprietary, confidential, business information. See Section 366.093, F.S.; Rule 25-22.006, F.A.C. TECO can seek to limit the disclosure of specific confidential information through an express or affirmative showing in accordance with the statute and rules. However, simply averring that the general information might be confidential is insufficient. Likewise, a claim of privilege must be based on an express or affirmative showing:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged . . . the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Rule 1.280(b)(5), F.R.C.P. (emphasis supplied). TECO has not met its burden of making its privilege claim expressly and TECO has not described the nature of the documents with a degree of specificity to allow OGC to assess the applicability of the privilege. Accordingly, TECO should be compelled to produce the documents requested in OGC's Requests to Produce numbers 4-8, 14, 15, 16, 20 and 21.

37. TECO further objects to Request to Produce number 8 on the grounds that it requires TECO to provide a legal opinion. Request number 8 does not, by its terms, request any opinion, legal or otherwise--it requests that documents be produced.

8. All documents which relate to, mention or otherwise reflect on TECO's legal obligation to make adequate investment in generating capacity and provide adequate and reliable electric service.

TECO's objection is specious and should be rejected, and TECO should be compelled to respond to Request to Produce number 8.

38. TECO supplements its conclusory objections to Requests to Produce numbers 13 and 22-24 by objecting on the specific ground that TECO's position with regard to the Requests to Produce is allegedly stated in various Commission proceedings. For the record, OGC does not seek production of any documents available in the public domain. However, if specific public documents responsive to OGC's Discovery Requests exist, TECO should be directed to identify such documents with enough detail to allow OGC

to retrieve the documents from the public record. The rationale set forth in Rule 1.340(c), F.R.C.P., for allowing a party to respond to interrogatories by producing records is instructive with respect to the identification of public records for document production. The burden of ascertaining the answer must be substantially the same for both parties. At present, only TECO knows which portions of the public records support its objections (or future responses). Accordingly, TECO should be compelled to specifically identify the public documents, by date, author or source, title and page number, which are responsive to OGC's Requests to Produce numbers 13 and 22-24. If no such documents exist other than those available in the public domain, TECO should so state.

39. Finally, TECO objects to Request to Produce number 25 on the grounds that it might be moot or, in the alternative, that given the large number of people required to respond, it would be unduly burdensome. This objection is absurd. Request to Produce number 25 seeks the following documents:

25. For each expert witness identified in TECO's Answers to OGC's First Set of Interrogatories, please produce:
  - (a) A resume or curriculum vitae for the expert witness;
  - (b) A list of all publications by the expert witness;
  - (c) Copies of any and all documents that the expert witness has prepared concerning any of the issues involved in this case;
  - (d) Copies of any and all documents that the expert may use to support his or her

- testimony in this case; and
- (e) Copies of any and all documents used or relied upon by the expert witness to evaluate this case.

This Document Request represents conventional, pre-hearing preparation information and TECO's objection thereto epitomizes the bad faith and abuse of the discovery process that infuse all of TECO's discovery objections. TECO should be compelled to respond to Request to Produce number 25.

40. In sum, TECO should be compelled to respond to Requests to Produce numbers 1-25 because TECO's objections are groundless and inaccurate and because TECO's objections fail on the merits. The examples given herein clearly demonstrate the relevance, materiality and propriety of OGC's Discovery Requests. The examples are illustrative of all of OGC's Requests to Produce and should not be considered to limit OGC's Motion to Compel. A copy of OGC's First Request for Production of Documents is attached hereto as Exhibit "C". OGC moves to compel TECO to respond to OGC's Requests to Produce numbers 1-3 and 8-25 as propounded and 4-7 as modified herein.

#### CONCLUSION

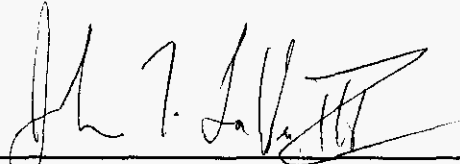
41. If TECO wishes to continue to participate as a party in this proceeding, it must respond to OGC's legitimate Discovery Requests. TECO has not filed a single response to OGC's Discovery Requests. Instead, TECO chose to file conclusory, baseless objections in an effort to thwart OGC's hearing preparation.

TECO's general objections are clearly contrary to law. TECO's specific objections fail on the merits and fail to provide the requisite substantive support. As a party in this docket, TECO has a responsibility to comply with the Florida Rules of Civil Procedure and the Commission should not tolerate TECO's unfounded efforts to evade its responsibilities and the rules.

42. OGC has conferred with counsel for the parties to this proceeding and is authorized to represent that FPC and TECO object to this Motion, LEAF has no objection to this Motion, and FPL and counsel for Commission Staff take no position on this Motion.

WHEREFORE, OGC respectfully requests that the Commission issue an order compelling responses to OGC's First Request for Admissions numbers 1-43, OGC's First Set of Interrogatories numbers 1-46, and First Request for Production of Documents numbers 1-25 as more specifically described herein.

Respectfully submitted this 4th day of February, 2000.



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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 991462-EU**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*) or by United States Mail, postage prepaid, on the following individuals this 4th day of February, 2000.

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\_\_\_\_\_  
Attorney

EXHIBIT "A"  
OGC'S FIRST REQUEST FOR  
ADMISSIONS (NOS. 1-43)  
TO TAMPA ELECTRIC COMPANY

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need for an Electrical Power Plant) DOCKET No. 991462-EU  
in Okeechobee County by Okeechobee )  
Generating Company, L.L.C. ) FILED: November 5, 1999  
\_\_\_\_\_ )

OKEECHOBEE GENERATING COMPANY'S  
FIRST REQUEST FOR ADMISSIONS  
(NOS. 1-43) TO TAMPA ELECTRIC COMPANY

Pursuant to Rule 1.370(a), Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Okeechobee Generating Company, L.L.C. hereby requests that Tampa Electric Company respond to the following requests for admissions:

DEFINITIONS

- A. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.
- B. "Project" means the Okeechobee Generating Project on which OGC based its petition for determination of need to the Florida Public Service Commission in Docket No. 991462-EU.
- C. "TECO" means Tampa Electric Company.
- D. "Commission" or "PSC" means the Florida Public Service Commission.
- E. "Non-separated wholesale sales" means wholesale sales of electric capacity or energy, or of both electric capacity and energy, that are either non-firm or of less than one year in duration.
- F. "Separated wholesale sales" means long-term, firm

EXHIBIT "A"

wholesale sales of electric capacity or energy, or of both electric capacity and energy, that are of more than one year in duration and that commit TECO's production capacity to wholesale customers.

G. "Merchant plant" or "merchant power plant" means a power plant with no rate base and no captive customers.

H. "Florida Energy Broker" or "Broker" means the Energy Broker Network, Inc., a Florida not-for-profit corporation that took over the Energy Broker function from the Florida Electric Power Coordinating Group, Inc., on October 5, 1995, and which was formed for the purpose of promoting the interchange of hour-long blocks of electric energy between and among its members.

#### REQUESTS FOR ADMISSIONS

Please admit or deny the truth of the following statements in the manner required by the Florida Rules of Civil Procedure:

1. Under existing regulatory policy in Florida, TECO's wholesale power sales are distinguished as "separated" and "non-separated" wholesale sales.
2. Non-separated wholesale sales are non-firm or less than one year in duration.
3. With respect to non-separated sales, TECO's retail ratepayers support all of the investment that is used to make the sales.
4. TECO's retail ratepayers receive all of the revenues, both fuel and non-fuel, that non-separated sales generate through

a credit in TECO's fuel and purchased power cost recovery charges.

5. Separated wholesale sales are long-term, firm wholesale sales greater than one year that commit TECO's production capacity to wholesale customers.

6. Wholesale sales are separated to remove the production plant and operating and maintenance expenses associated with the wholesale sales from the retail ratepayers' cost responsibility.

7. TECO's shareholders keep all of the non-fuel revenues received from separated sales.

8. With respect to its separated wholesale sales, TECO retains the right to sell power outside the State of Florida any time it is in the economic interest of TECO to do so.

9. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to prescribe uniform systems and classifications of accounts.

10. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to prescribe a rate structure.

11. With respect to TECO's separated wholesale sales, the Commission does not have jurisdiction over TECO to require electric power conservation by TECO.

12. With respect to its separated wholesale sales, TECO does not engage in end-use conservation programs.

13. With respect to its separated wholesale sales, TECO has

not and does not propose to develop conservation goals pursuant to section 366.82(2), Florida Statutes.

14. With respect to its separated wholesale sales, TECO has an incentive to price each unit of energy it produces at the highest possible price that will still enable TECO to make a sale of that unit of energy so long as the price is greater than the incremental cost of providing and delivering the unit of energy.

15. With respect to its separated wholesale sales, TECO will seek to recover a return on equity through the revenue from the energy it sells.

16. With respect to its separated wholesale sales, TECO's shareholders retain the proceeds of the sales in the same manner investors of merchant plants retain the proceeds of their sales.

17. Other than sales made through the Florida Energy Broker, when TECO makes non-separated wholesale sales, the benefit of the proceeds in excess of costs associated with those sales flow back to its ratepayers because the ratepayers bear the cost responsibility of the investment used to make those sales.

18. TECO utilizes generating capacity for the purpose of creating profits for its shareholders.

19. When TECO makes sales through the Florida Energy Broker, only 80% of the proceeds in excess of costs associated with those sales flow back to the ratepayers notwithstanding the fact that the ratepayers support all of the investment used to make those sales.

20. When TECO makes Broker sales, 20% of the proceeds in excess of costs associated with those sales flow directly to TECO's shareholders notwithstanding the fact that the ratepayers support all of the investment used to make those sales.

21. If TECO, in its sole discretion, determines that the Project is a cost-effective and reliable supply resource and if mutually agreeable terms and conditions for the purchase and sale of capacity and energy are reached by TECO and OGC, there is no impediment to TECO's contracting to purchase capacity and energy from the Project on a firm, long-term basis.

22. If TECO entered into a long-term, firm contractual commitment for the purchase of power from the Project, TECO can include the amount of the purchased power in its projected reserve margins.

23. Merchant power plants are currently operating in the State of Florida.

24. Merchant power plants not subject to the Florida Electrical Power Plant Siting Act (e.g., combustion turbines) are legal under current Florida Law.

25. TECO's shareholders have the opportunity to earn a fair rate of return from all sales of electricity made to its retail ratepayers.

26. TECO has an obligation to retain earnings or pay dividends to its shareholders.

27. OGC is not guaranteed a fair rate of return or an exclusive franchised service territory.

28. The Project will provide the most cost-effective, reliable means for TECO to meet its obligation to serve its retail customers or else TECO will not purchase power from the Project.

29. TECO is not entitled to assurances as to how, when, where and on what terms any merchant power plant currently selling wholesale power in the State of Florida will be marketed.

30. When TECO constructs a power plant, TECO's ratepayers bear most or all of the risk of plant obsolescence.

31. When TECO makes separated wholesale sales, there is no assurance that the terms of sale of that power will be advantageous to the ultimate consumers of the power.

32. A second, major trans-Florida gas pipeline will benefit the State of Florida by enhancing Florida's gas supply reliability.

33. TECO's reserve margin calculations in its ten-year site plan filings include the contribution of non-firm resources.

34. TECO opposes the construction and operation of merchant plants in Florida.

35. TECO supports a robust, competitive wholesale power market in Florida.

36. Merchant plants sell uncommitted capacity and energy into the wholesale market.

37. TECO has previously relied on unspecified capacity and

energy purchases as an element of its reserve margin in its ten-year site plan filings.

38. TECO has previously purchased power generated by a merchant power plant.

39. TECO participates in the wholesale power market both as a buyer and as a seller of wholesale power.

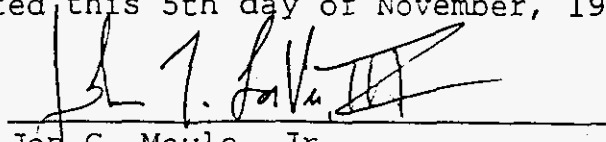
40. TECO has sold wholesale power outside the State of Florida within the last five years.

41. Merchant plants increase the supply of generation resources within any given wholesale power market.

42. The greater the supply of generation resources in any wholesale power market, the more robust the competition in that market will be.

43. The operation of the various power plants by other retail-serving utilities in Peninsular Florida, or of the various power plants the output of which is contractually committed to retail-serving utilities in Peninsular Florida, does not, under normal conditions, adversely affect the manner in which TECO operates its existing generating units.

Respectfully submitted, this 5th day of November, 1999.



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Attorneys for Okeechobee Generating  
Company, L.L.C.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*) or U.S. Mail, on this 5th day of November, 1999, to the following:

W. Cochran Keating, Esq.\*  
Division of Legal Services  
Florida Public Service Comm.  
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Mr. Scott Goorland, Esq.  
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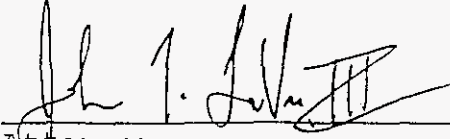
  
\_\_\_\_\_  
Attorney

EXHIBIT "B"

OGC's First Set of Interrogatories  
(Nos. 1-46) to Tampa Electric Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need for an Electrical Power ) DOCKET NO.991462-EU  
Plant in Okeechobee County by ) FILED: November 5, 1999  
Okeechobee Generation Company, )  
L.L.C. )  
\_\_\_\_\_)

OKEECHOBEE GENERATING COMPANY'S  
FIRST SET OF INTERROGATORIES (NOS. 1-46)  
TO TAMPA ELECTRIC COMPANY

Pursuant to Rule 1.340, Florida Rules of Civil Procedure,  
and Rule 28-106.206, Florida Administrative Code, Okeechobee  
Generating Company hereby serves its First Set of Interrogatories  
(Nos. 1-46) on Tampa Electric Company.

DEFINITIONS

For purpose of these interrogatories, the following  
definitions apply:

A. "And" and "or" shall be construed in the disjunctive or  
conjunctive as necessary in order to bring within the scope of each  
request all documents which might otherwise be construed  
to be outside its scope.

B. "You" or "your" means Tampa Electric Company and any of  
its agents, employees, representatives, or other person acting or  
purporting to act of behalf of Tampa Electric Company, including  
any subsidiaries, affiliates, and divisions or departments of same.

C. "Merchant Power Plant" or "Merchant Plant" means a power  
plant with no rate base and no captive retail customers.

D. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.

E. "Project" means the Okeechobee Generating Project on which OGC based its Petition for a Determination of Need for an Electrical Power Plant filed with the Florida Public Service Commission in Docket No. 991462-EU.

F. "PSC" or "Commission" means the Florida Public Service Commission.

G. "Petition to Intervene" means Tampa Electric Company Petition for Leave to Intervene in this proceeding filed on October 20, 1999.

H. "OGC's Petition" means Okeechobee Generating Company, L.L.C.'s Petition for Determination of Need for an Electrical Power Plant filed with the Commission on September 24, 1999.

I. "TECO" shall mean Tampa Electric Company and shall mean any of its agents, employees, representatives, or other person acting or purporting to act of behalf of Tampa Electric Company, including any subsidiaries, affiliates, and divisions or departments of same.

J. "FRCC" means the Florida Reliability Coordinating Council.

#### INSTRUCTIONS

A. If any interrogatory calls for a document or unwritten

communication which you claim to be privileged, state the grounds upon which the claim of privilege is made and identify each document or unwritten communication. In identifying such document or communication, you may substitute for a summary of its contents, principal terms or provisions, a statement of the subject matter to which it relates. The fact that an interrogatory calls in part for documents or unwritten communications which you claim to be privileged is not a basis for you to fail to identify fully all documents or unwritten communications called for by such interrogatory as to which no privilege is claimed.

B. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiry and secure the information to do so, please so state and answer the interrogatory to the extent possible. Specify the portion of such interrogatory you claim you are unable to fully and completely answer, and further specify the facts on which you rely to support your contention that you are unable to answer the interrogatory fully and completely.

C. Please use the space provided for your answer, if adequate; if not, attach additional sheets with the required information.

## INTERROGATORIES

1. Please describe in detail the manner in which TECO believes its ability to plan its transmission system to meet its customers' needs will be adversely affected by the Project.

2. Please describe in detail the manner in which TECO believes its ability to plan its generation additions to meet its customers' needs will be adversely affected by the Project.

3. Please describe in detail the manner in which TECO believes its ability to build transmission facilities to meet its customers' needs will be adversely affected by the Project.

4. Please describe in detail the manner in which TECO believes its ability to operate transmission facilities to meet its customers' needs will be adversely affected by the Project.

5. Please describe in detail the manner in which TECO believes its ability to build generation to meet its customers' needs will be adversely affected by the Project.

6. Please describe in detail the manner in which TECO believes its ability to operate generation to meet its customers' needs will be adversely affected by the Project.



7. Please describe in detail the manner in which TECO believes its ability to secure certification of transmission facilities necessary to discharge its obligation to serve and meet its customers' needs will be adversely affected by the Project.

8. Please describe in detail the manner in which TECO believes its ability to secure certification of generating facilities necessary to discharge its obligation to serve and meet its customers' needs will be adversely affected by the Project.

9. Please explain the basis for TECO's allegation in paragraph 17 of its Petition to Intervene that the Project may reduce natural gas availability within Florida given the fact that a second, major natural gas pipeline will be constructed in conjunction with the construction of the Project.

10. Please explain in detail the basis for TECO's allegation in paragraph 17 of its Petition to Intervene that the Project will result in the uneconomic duplication of generation facilities.

11. In paragraph 19 of its Petition to Intervene, TECO alleges that the displacement of electrical energy by the Project may have an adverse impact on TECO which is planning to construct additional gas-fired generating capacity during the time frames addressed in the Petition. How does TECO believe that the construction by OGC of gas-fired generating capacity adversely would affect TECO's planned construction of gas-fired generating capacity?

12. Please explain in detail how TECO believes that the construction of the Project will make it "unnecessarily burdensome" for TECO to plan and provide transmission capacity necessary to meet service obligations as alleged in paragraph 23 of its Petition to Intervene.

13. Please explain in detail how TECO believes that the construction of the Project will introduce "tremendous uncertainty" in the planning processes for TECO as alleged in paragraph 23 of its Petition to Intervene.

14. Please describe in detail the detrimental impacts that TECO believes the Project will have on TECO's shareholders.

15. Please describe in detail the detrimental impacts that TECO believes the Project will have on TECO's ratepayers.

16. Please describe in detail the detrimental impacts that TECO believes that the Project will have on TECO's short-term and long-term planning processes.

17. Does TECO have a written or unwritten corporate policy against purchasing power from Merchant Plants like the Project even if those Merchant Plants are cost-effective and demonstrably reliable alternatives to self generation? If the answer to the foregoing is yes, please state that corporate policy.

18. Does TECO plan its transmission system taking into consideration the existing and planned transmission facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

19. Does TECO plan its generation system taking into consideration the existing and planned generation facilities of other utilities, cogenerators and independent power producers? If not, why not? If yes, why?

20. How does TECO account for, plan or integrate the transmission facilities of other retail utilities, cogenerators and independent power producers into its planning process if none of the transmission facilities or capacity of those entities is directly committed to TECO?

21. How does TECO account for, plan or integrate the generation facilities of other retail utilities, cogenerators and independent power producers into its planning process if none of the generation resources of those entities is directly committed to TECO?

22. Are other Florida utilities with generation facilities obligated to sell power to TECO? If the answer is yes, under what conditions are those utilities obligated to sell power to TECO?



23. Under what conditions is TECO required to sell power into the Florida grid?

24. Is TECO a net buyer or net seller of off-system opportunity sales?

25. Is TECO a net seller or net buyer of long-term (greater than one year), separated wholesale power sales.

26. In the last ten years, has TECO ever experienced transmission line exceedences? If the answer is yes, please list all such exceedence events, the magnitude of the exceedences and actions, if any, taken by TECO to remedy the exceedences.

27. Does TECO have an economic incentive to maximize returns when it makes wholesale sales?

28. What percentage of TECO's wholesale sales for the years 1995 through 1999 were made to utilities in Florida?

29. What percentage of TECO's wholesale sales for the years 1995 through 1999 were made to power marketers?

30. What percentage of TECO's wholesale sales for the years 1995 through 1999 were made to utilities outside Florida?

31. Do any of TECO's affiliate or parent corporations including, but not limited to TECO Power Services ( or TECO Power Services, Inc.) have plans to develop, own, or operate merchant power plants outside the State of Florida? If the answer is yes, please list the name of the merchant power plants, the size and configuration of the merchant power plants, the location of the merchant power plants, and the owners of the merchant power plants.

32. Do any of TECO's affiliate or parent corporations including, but not limited to TECO Power Services (TECO Power Services, Inc.) currently own or operate, or own and operate, merchant power plants outside the State of Florida? If the answer is yes, please list the name of the merchant power plants, the size and configuration of the merchant power plants, the location of the merchant power plants, and the owners of the merchant power plants.

33. Identify each person that prepared or assisted in the preparation of the answers to these interrogatories and state which specific answers(s) each person prepared or assisted in preparing.

34. Please identify each person expected to be called by TECO to testify as an expert witness at the final hearing in this docket and, with regard to each expert witness, provide the following information:

- a) The subject matter on which the expert witness is expected to testify.
- b) The substance of the facts and opinions on which the expert witness is expected to testify.
- c) A summary of the grounds for each opinion that the expert witness will express at the final hearing.

35. Please identify each person expected to be called by TECO to testify as a non-expert witness at the final hearing in this case and, with regard to each witness, describe the substance of the facts and conclusions about which the witness is expected to testify.

36. Please identify all documents on which TECO will rely or introduce as exhibits at the final hearing in this case.

37. Please define TECO's criteria governing the application of special protection systems like post-contingency generator runback and post-contingency line switching, and please identify all TECO applications of such systems at 138 kV and above.

38. Please define TECO's voltage collapse or voltage instability "P-V" criterion and the method by which TECO applies the test transfer.



39. Please define TECO's inter-control area and intra-control area interfaces and their associated limits or operating nomograms.

40. Please define TECO's stuck breaker criterion.

41. Using the FRCC's definition of contingency, please define TECO's probable, credible-less probable and severe contingency lists for all transmission line and transformer outages at 138 kV and above.

42. Please identify other power producers that have requested transmission service from TECO and all of TECO's resource additions/retirements through winter 2003.

43. Please identify all of TECO's transmission line and transformer additions/retirements 138 kV and above, through winter 2003.

44. Please identify any additions or changes to TECO's Proposed Transmission Lines, 1999-2008 as outlined in the FRCC 1999 Regional Load & Resource Plan, dated July 1999.

45. Please specify the summer and winter continuous and time limited emergency ratings for the following lines: Mulb S - Sandhl W 69 kV; Hydepk N - Matz N 69 kV. In addition, please identify the limiting element in each of these lines (e.g. conductor, switch, current transformer, etc.) and whether these lines are sag limited.

46. Please specify the summer and winter continuous and time limited emergency ratings for the following transformers: River S 230 kV/69 kV; Big Bend #1 230/24 kV. In addition, please identify the limiting element in these branches.

I HEREBY CERTIFY that I am authorized to answer these interrogatories on behalf of Tampa Electric Company, and that the answers to these interrogatories are true and correct.

By: \_\_\_\_\_

As Its: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

BEFORE ME THE UNDERSIGNED AUTHORITY, personally appeared \_\_\_\_\_, who is personally known to me or produced a \_\_\_\_\_ license, and being first duly sworn, deposes and says that he/she has read the foregoing answers and that they are true.

SWORN AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Notary Public  
(Affix Seal)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Commission Expiration Date

EXHIBIT "C"

OGC's First Request for Production of  
Documents (Nos. 1-25) to Tampa Electric Company

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Determination )  
of Need for an Electrical Power ) DOCKET NO.991462-EU  
Plant in Okeechobee County by )  
Okeechobee Generating Company, ) FILED: November 5, 1999  
L.L.C. )  
\_\_\_\_\_)

OKEECHOBEE GENERATING COMPANY'S  
FIRST REQUEST FOR PRODUCTION OF  
DOCUMENTS (NOS. 1-25) TO TAMPA ELECTRIC COMPANY

Pursuant to Rule 1.350, Florida Rules of Civil Procedure, and Rule 28-106.206, Florida Administrative Code, Okeechobee Generating Company hereby serves its First Request for Production of Documents (Nos. 1-25) upon Tampa Electric Company ("TECO").

INSTRUCTIONS

A. You are requested to produce the documents designated herein at Landers & Parsons, P.A., 310 West College Avenue, Tallahassee, Florida 32301, during normal business hours (between 8:00 a.m. and 5:00 p.m., Monday through Friday), on or before the time required for production of the documents under the Florida Rules of Civil Procedure, or within such other time for production as may be prescribed by the Prehearing Officer, or at such other place and time as to which the parties may mutually agree.

B. If the documents otherwise required to be produced by this request are withheld, please identify the document by stating its date, author, recipients and your reasons for withholding the document.

C. If any request is objected to, set forth all reasons for the objections. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document requested and state the grounds for the assertion of the privilege in sufficient detail to permit the Commission to adjudicate the validity of the claims. Identify the document withheld by date, author, sender, recipient, (including all persons who were shown, had access to, or received a copy) format, title, present location, and give a general description of the subject matter of the document. If you object in part to any request, produce all documents included in the remainder of the request.

D. Documents should be produced separately for each paragraph of this request, or, alternatively, should be identified as produced with respect to the particular paragraph or paragraphs to which they are responsive.

#### DEFINITIONS

A. "You" or "your" means Tampa Electric Company ("TECO") and any of its agents, employees, representatives, or other person acting or purporting to act of behalf of Tampa Electric Company including any subsidiaries, affiliates, and divisions or departments of same.

B. "OGC" means the Petitioner, Okeechobee Generating Company, L.L.C.



C. "Project" means the Okeechobee Generating Project on which OGC based its petition for a determination of need to the Florida Public Service Commission in Docket No. 991462-EU.

D. "PSC" or "Commission" means the Florida Public Service Commission.

E. "Document" or "Documents" means any written, graphic, electronic, magnetic, or other means of preserving thought, expression, or information and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies whether by reason of any notation made on such copy or otherwise, whether produced internally or received from some other source within the possession, custody or control of TECO, or its agents, including, but not limited to, computer printouts and other computer materials (including, but not limited to "e-mail" or similar correspondence or stored information), graphic or aural records or representations of any kind, including without limitation, photographs, charts, graphs, plans, microfiche, microfilm, videotape recordings, motion pictures, and electronic, mechanical or electric recordings or representations of any kind (including without limitation, tapes, cassettes, disks and recordings), including all drafts, attachments, and enclosures associated with any of the foregoing.

F. "Relate to" means constituting, containing, embodying, reflecting, identifying, stating, referring to, dealing with,

tending to prove or disprove, or in any way pertaining to.

G. "Merchant Power Plant" or "Merchant Plant" means a power plant with no rate base and no captive retail customers.

#### DOCUMENT REQUESTS

Please produce all of the following documents which are in your possession, custody, or control, including all such documents in the possession, custody or control of your partners, employees, agents, attorneys, accountants, and others acting on your behalf.

1. All documents which relate to, mention or otherwise reflect on TECO's long-term planning being adversely affected by the existence of capacity and energy from Merchant Plants in the Florida power supply grid.

2. All documents which relate to, mention or otherwise reflect on TECO's long-term planning being adversely affected by the Project.

3. All documents which relate to, mention or otherwise reflect on TECO's ability to serve its retail customers being impaired by capacity from Merchant Plants being available for purchase by TECO or for purchase by other retail-serving utilities in Peninsular Florida.

4. All documents which relate to, mention or otherwise reflect on TECO contracting for energy in the wholesale market on an hourly basis during the last ten years.

5. All documents which relate to, mention or otherwise

reflect on TECO contracting for energy in the wholesale market for more than one hour and less than one year during the last ten years.

6. All documents which relate to, mention or otherwise reflect on TECO contracting for capacity in the wholesale market on an hourly basis during the last ten years.

7. All documents which relate to, mention or otherwise reflect on TECO contracting for capacity or energy, or both capacity and energy, in the wholesale market for more than one hour and less than one year during the last ten years.

8. All documents which relate to, mention or otherwise reflect on TECO's legal obligation to make adequate investment in generating capacity and provide adequate and reliable electric service.

9. All documents which relate to, mention or otherwise reflect on whether the sale of power from Merchant Plants would or would not be advantageous to ultimate consumers in Florida, in relation to regulated sales by utilities like TECO.

10. All documents which relate to, mention or otherwise reflect on whether, as evaluated by TECO, the detrimental impacts of the OGC Project would outweigh the benefits of the OGC Project.

11. All documents which relate to, mention or otherwise reflect on whether the Project will absorb or divert natural gas from other power producers in the State, who are committed to serve

customers in the State on a long-term basis.

12. All documents which relate to, mention or otherwise reflect on whether the construction of a second, major trans-Florida natural gas pipeline would be a detriment to the State.

13. All documents which relate to, mention or otherwise reflect on whether uncommitted capacity may be included in the calculation of reserve margins for individual utilities, such as TECO.

14. All documents which relate to, mention or otherwise reflect on whether TECO will be adversely affected by the OGC Project.

15. All documents which relate to, mention or otherwise reflect on TECO's allegations that the Project does not constitute the most cost-effective means for any retail utility to meet its need for firm power resources.

16. All documents which relate to, mention or otherwise reflect on the recovery of generation costs when TECO purchases power.

17. All documents which relate to, mention or otherwise reflect on TECO's transmission lines or distribution lines that have experienced violations of voltage standards within the past ten years.

18. All documents which relate to, mention or otherwise reflect on TECO's power marketing arrangements or contracts that

vary from the terms of filed tariffs.

19. All documents on which TECO intends to rely at the final hearing in this proceeding.

20. All documents which relate to, mention or otherwise reflect on wholesale sales in Florida by TECO or by any of its affiliates.

21. All documents which relate to, mention or otherwise reflect on TECO's development, ownership or operated Merchant Power Plants in the United States.

22. All documents which relate to, mention or otherwise reflect on the degree to which, if at all, the benefit of revenues from any wholesale sales made by TECO are credited to or "flowed back" to TECO's retail electric customers.

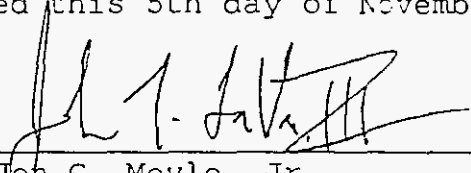
23. All documents which relate to, mention or otherwise reflect on the degree to which, if at all, the benefit of revenues from any wholesale sales made by any of TECO's affiliates, including, without limitation, Hardee Power Partners, are credited to or "flowed back" to TECO's retail electric customers.

24. Any and all documents that directly or indirectly indicate that the determination of need for OGC should not be issued by the PSC.

25. For each expert witness identified in TECO's Answers to OGC's First Set of Interrogatories, please produce:

- (a) A resume or curriculum vitae for the expert witness;
- (b) A list of all publications by the expert witness;
- (c) Copies of any and all documents that the expert witness has prepared concerning any of the issues involved in this case;
- (d) Copies of any and all documents that the expert may use to support his or her testimony in this case;  
and
- (e) Copies of any and all documents used or relied upon by the expert witness to evaluate this case.

Respectfully submitted this 5th day of November, 1999.



---

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Attorneys for Okeechobee Generating  
Company, L.L.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery (\*) or U.S. Mail, on this 5th day of November, 1999, to the following:

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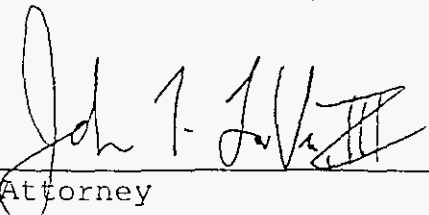
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\_\_\_\_\_  
Attorney