

O/A.  
2-4-91

Original 647  
**FILED**  
NOV 16 1990  
CLERK, SUPREME COURT  
BY [Signature] Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

FLORIDA POWER CORPORATION, )  
Appellant, )  
vs. )  
SEMINOLE COUNTY and CITY OF )  
LAKE MARY, )  
Appellees. )

CASE NO. 76,743

---

AMICUS CURIAE BRIEF  
OF TAMPA ELECTRIC COMPANY  
IN SUPPORT OF APPELLANT, FLORIDA POWER CORPORATION

---

LEE L. WILIS  
Florida Bar No. 0135074

JAMES D. BEASLEY  
Florida Bar No. 0178751  
Ausley, McMullen, McGehee,  
Carothers and Proctor  
Post Office Box 391  
Tallahassee, Florida 32302  
(904) 224-9115

Attorneys for Tampa Electric Company

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES.....	i
INTRODUCTION.....	1
SUMMARY.....	4
CERTIFICATE OF SERVICE.....	6

TABLE OF AUTHORITIES

FLORIDA STATUTES

Chapter 366.....	1
Section 337.403.....	4

## INTRODUCTION

Amicus Curiae, Tampa Electric Company, ("Tampa Electric" or "the company"), incorporated in 1899 and reincorporated in 1949, is a public utility operating wholly within Florida and principally engaged in the generation, purchase, transmission, distribution and sale of electric energy. The company's rates and services are regulated by the Florida Public Service Commission ("FPSC") pursuant to Chapter 366, Fla. Stat. Tampa Electric has a service area covering some 2,000 square miles in west central Florida, including Hillsborough County and parts of Pasco, Pinellas, and Polk Counties, with a population estimate at over 1,000,000. Tampa Electric served 453,455 customers and had 2,955 employees as of December 31, 1989. In addition to the counties served by Tampa Electric, the company serves customers within the municipal limits of the Cities of Tampa, Plant City, Temple Terrace, Winter Haven, Auburndale, Lake Alfred, Eagle Lake, Mulberry, Dade City, San Antonio, Ruskin, and Oldsmar.

Tampa Electric has in place approximately 1,128 miles of overhead transmission lines and 6,687 miles of overhead distribution lines. The installed cost of these overhead facilities, net of depreciation, is approximately \$274 million. Tampa Electric has a significant stake in the Court's disposition of this appeal.

### Potential Impact of this Appeal on Tampa Electric's Customers

If the lower court's decision in this case is affirmed, it could send signals to counties and municipalities around the state that they are free to mandate undergrounding of utility facilities at the expense of the general body of the utilities' customers. This could have a devastating impact on customers served by Tampa Electric.

During hearings conducted in FPSC Docket No. 890833-EU (In re: Investigation into the Cost-Effectiveness of Undergrounding Electric Utility Lines), Tampa Electric stated it would have to invest approximately \$436 million (in 1989 dollars) annually for the next 15 years in order to convert the company's existing transmission and distribution facilities to underground and install all new transmission distribution conductors underground. The total cost of such a project, including inflation, would be \$9.9 billion. This would have the effect of quadrupling Tampa Electric's total present plant-in-service investment.

Such a requirement would have a monumentally adverse impact on the electric bills of Tampa Electric's customers. During the hearings in Docket No. 890833-EU, Tampa Electric presented evidence that by the end of the 15 year cycle required to convert all Tampa Electric transmission and distribution facilities to underground installations, electric bills for average residential customer would have to be some 126% higher than they otherwise would be without the undergrounding.

The question at hand is not whether Tampa Electric's customers inside a municipality or special district may request non-standard (i.e., all underground) electric facilities judged to be safe by the FPSC.

Indeed, if such a group volunteered to pay for the extra cost of such non-standard facilities, the FPSC might see fit to grant such a request. The issue at hand is whether a municipal government may require the utility to install such facilities at the utilities "own expense" such that the utility is forced to collect the cost of the benefits for a few from the much larger body of its customers who do not receive the underground services. Such a precedential ruling would unfairly penalize those who pay electric bills but do not receive the underground service. The FPSC's authority exists, in part, to prevent such a result.

Nowhere in the Florida Statutes has the Legislature expressed its intent to confer upon counties and municipalities the authority to bring about such drastic results. Instead, regulation of the entire area of electric service, facilities and rates of public utilities has been delegated to the exclusive jurisdiction of the FPSC. To allow otherwise would be to reject the notion of a coordinated statewide supply of reliable and economic electric power. Tampa Electric strongly urges the Court to reject any interpretation of county or municipal jurisdiction which would erode the state's existing power supply system into a hodge podge of unreliable, locally dictated, mini-systems with the attendant prohibitive costs to utility customers around the state.

Tampa Electric's Adoption of the Argument  
Presented by Florida Power Corporation

Tampa Electric has reviewed the argument presented to the trial court by Florida Power Corporation and believes that it provides a compelling basis for reversal of the decision of the trial court and for a declaration by this Court that the ordinances in questions are invalid and

unconstitutional. In particular, Tampa Electric concurs that the final judgment on appeal is predicated on a misinterpretation of §337.403, Fla. Stat. That statute addresses only the removal or relocation of utility facilities and not the extremely costly conversion of above ground facilities into underground systems.

Tampa Electric concurs with Florida Power Corporation's assessment that the local ordinances in question conflict with the exclusive jurisdiction of the Florida Public Service Commission under Chapter 366, Fla. Stat. If permitted to operate, these ordinances would prevent the utility from carrying out its public duties by imposing arbitrary conditions on its uses of public rights-of-way. As such, the ordinances in question should not be permitted to stand.

It is important to note that reversal of the final judgment will not hamper the Appellees' exercise of their zoning authority, including their ability to require developers of new subdivisions to place their electric power supply facilities underground. The existing rules of the FPSC contemplate this and insure that the developer pays the incremental costs of the undergrounding. The developer, in turn, can recoup this additional cost when the houses are sold.

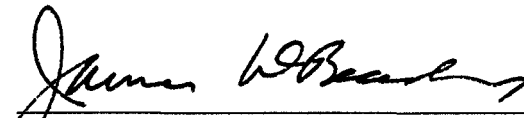
#### SUMMARY

For the above-stated reasons, Tampa Electric Company respectfully urges the Court to reverse the decision of the trial court and to declare that the ordinances in question are invalid and unconstitutional. Such a result would respect the plain meaning of §377.403, Fla. Stat., as well as the Legislature's clear design to vest the Florida Public Service

Commission with exclusive jurisdiction over the matters which Appellees have attempted to address by way of local ordinances.

DATED this 16<sup>th</sup> day of November, 1990.

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 Amicus Curiae Brief, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail on this 16<sup>th</sup> day of November, 1990 to the following:

Mr. Albert H. Stephens  
Ms. Pamela I. Smith  
Office of the General Counsel  
Florida Power Corporation  
Post Office Box 14042  
St. Petersburg, FL 33733

Mr. Ned M. Julian, Jr.  
Stenstrom, McIntosh, Julian,  
Colbert, Whigham & Simmons  
Post Office Box 1330  
Sanford, FL 32772-1330

Mr. Davisson F. Dunlap, Jr.  
300 East Park Avenue  
Tallahassee, FL 32301

Mr. Alan C. Sundberg  
Ms. Sylvia H. Walbolt  
Mr. Robert Pass  
Mr. F. Townsend Hawkes  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
215 South Monroe Street  
410 First Florida Bank  
Tallahassee, FL 32301

Mr. Lonnie N. Groot  
Assistant County Attorney  
Seminole County  
Seminole County Services Building  
1101 East First Street  
Sanford, FL 32771

  
\_\_\_\_\_  
ATTORNEY