

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Cargill
Fertilizer, Inc. for permanent
approval of self-service
wheeling to, from, and between
points within Tampa Electric
Company's service area.

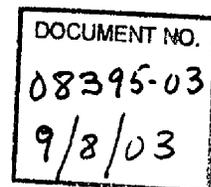
DOCKET NO. 020898-EQ
ORDER NO. PSC-03-1009-PCO-EQ
ISSUED: September 8, 2003

ORDER GRANTING MOTION TO COMPEL PRODUCTION OF
DOCUMENTS (Nos. 1-16), DENYING MOTION FOR EXTENSION
OF TIME TO FILE TESTIMONY, AND REVISING CONTROLLING DATES
FOR THE FILING OF COMPANY, STAFF, AND REBUTTAL TESTIMONY

On September 2, 2003, Tampa Electric Company (Tampa Electric) filed a Motion for Extension of Time to File Testimony and Motion to Compel Production of Documents (Nos. 1-16), requesting that the Prehearing Officer grant Tampa Electric a two week extension of the due date for filing its testimony in light of Cargill Fertilizer, Inc.'s (Cargill) failure to cooperate in the discovery process. Further, Tampa Electric requests that the Prehearing Officer order Cargill to produce to Tampa Electric those documents that are responsive to Document Request No. 2 of Tampa Electric's First Request for Production of Documents (Nos. 1-16). On September 4, 2003, Cargill filed a response opposing Tampa Electric's Motion to Compel Production of Documents and Motion for Extension of Time to File Testimony.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case . . ." Based upon this authority, and having considered the Motion and Response, the rulings are set forth below.

Tampa Electric seeks an order compelling Cargill to produce responsive documents to its First Request for Production of Documents and extending Tampa Electric's due date to file testimony. Each of Tampa Electric's arguments, Cargill's response, and the attendant rulings are addressed separately below.



Tampa Electric requests that Cargill be ordered to fully respond to Document Request No. 2, which reads as follows:

Provide all documents related to evaluated, proposed, planned, implemented, or completed generation expansion projects for Cargill electric generation facilities located within Tampa Electric service area from January 1, 1997 through the present date.

Tampa Electric states that on August 29, 2003, Cargill identified a responsive document to Document Request No. 2 that it is willing to produce only under a non-disclosure agreement that limits access to this document to Tampa Electric's lawyers and outside consultants. According to Tampa Electric, Cargill provided no description of the document in question and offered no explanation as to why the non-disclosure agreement that will cover its other confidential documents does not provide adequate protection in this instance. Tampa Electric requests that Cargill fully respond to Tampa Electric's Document Request No. 2, pursuant to a reasonable non-disclosure agreement, without limiting access to any such responsive documents to only Tampa Electric's lawyers and outside consultants.

Cargill responds that it opposes Tampa Electric's Motion to Compel. Cargill states that in its Initial Objections, filed August 11, 2003, it reserved its right to object as it gathered and reviewed the actual documents. Cargill stated:

The Objections stated herein are preliminary in nature and are made at this time for the purpose of complying with the ten-day requirement of Order No. PSC-03-0866-PCO-EQ, issued in this docket on July 24, 2003, by the Florida Public Service Commission (the Commission) in the above-referenced docket. Should additional grounds for objection be discovered as Cargill prepares its Responses to the above-referenced set of requests, Cargill reserves the right to supplement, revise, or modify its objections at that time that it serves its Responses.

Cargill further asserts that documents responsive to Production Request No. 2 were produced to Tampa Electric on September 4, 2003. According to Cargill, while all the documents produced are

confidential, there is one document, the Commitment Request, which contains trade secret information and is highly confidential and proprietary to Cargill. Cargill asserts that due to the sensitive nature of the document and its limited relevance to the issue in this case, Cargill must restrict its dissemination. Cargill states that the Commitment Request, with a small portion of the information redacted, was produced to Tampa Electric's counsel on September 4, 2003. Cargill claims that it specifically told counsel for Tampa Electric that the Commitment Request was a highly confidential business document.

Tampa Electric further requests a two week extension of the due date for its testimony in this proceeding, extending the due date to October 1, 2003. In addition, Tampa Electric requests that the balance of the procedural schedule be adjusted commensurately. Tampa Electric states that it served its first set of discovery on Cargill on August 1, 2003, with the specific request for Cargill to produce the requested documents to Harry W. Long, Jr. at Tampa Electric's Tampa Offices. Tampa Electric states that on August 20, 2003, Cargill indicated in a letter that it would not deliver responsive documents to Tampa Electric's offices. According to Tampa Electric, after acknowledging that responses were due on September 2, 2003, Cargill offered to make the responsive documents available at its premises at a mutually convenient time after September 2, 2003. Tampa Electric asserts that Cargill did not object to providing the documents to Tampa Electric's offices, as Tampa Electric had instructed in its First Request for Production of Documents. Tampa Electric states that on August 29, 2003, Cargill advised it that some documents responsive to Tampa Electric's Document Request would be made available at Cargill's plant in Bartow, Florida, while other responsive documents would be made available at Cargill's offices in Tampa, Florida. Tampa Electric further states that Cargill advised that Tampa Electric would not be permitted to divide its resources into two teams to review documents at both sites simultaneously because of Cargill's contention that there was only one individual in its company who could supervise Tampa Electric's review of the responsive documents. Tampa Electric asserts that Cargill's intransigence with regard to discovery makes it impossible for it to complete discovery and file testimony by September 17, 2003, as required under the procedural schedule set forth in Order No. PSC-03-0909-PCO-EQ, issued August 7, 2003.

Cargill responds that it opposes Tampa Electric's Motion for Extension of Time to File Testimony. Cargill states that it provided Tampa Electric with non-voluminous documents in response to its production requests on September 2, 2003. Cargill further states that production of voluminous documents occurred at Cargill's premises on September 4, 2003. Cargill asserts that in its Initial Objections, filed August 11, 2003, it objected to any document request that purported to expand Cargill's obligations under the Florida Rules of Civil Procedure or Florida Law. According to Cargill, it was not necessary to object to Tampa Electric's instruction to produce documents to its offices because Cargill complied with Rule 1.350(b), Florida Rules of Civil Procedure, which provides that when producing documents, the producing party shall "produce them as they are kept in the usual course of business. . . ." In response to Tampa Electric's statement that it was unable to review the documents on September 2, 2003, the due date for Cargill's response, Cargill states that Rule 1.350(b), Florida Rules of Civil Procedure, provides, in pertinent part, that "the party to whom the request is directed shall serve a written response within 30 days after service of the request." According to Cargill, Tampa Electric unreasonably expected Cargill to make the documents available on the morning of September 2, 2003, when the responses themselves were not due until the close of business. Cargill further states that Tampa Electric could not review the documents at different locations simultaneously because the individual who has responsibility for this case needed to be present to supervise the production of documents. Cargill asserts that the procedure it employed for document production was reasonable and did not prejudice Tampa Electric, nor does Tampa Electric explain how it has been harmed. Finally, Cargill requests that to the extent Tampa Electric is given any extension of time to file its testimony, Cargill's time to file rebuttal testimony be extended day for day.

Upon review of the pleadings and consideration of the arguments, Tampa Electric's Motion to Compel Production of Documents (Nos. 1-16) is granted. While it appears that Cargill has fully responded to Tampa Electric's First Request for Production of Documents, to the extent that there may be any documents still outstanding, Cargill shall produce such documents to Tampa Electric's offices by September 8, 2003.

Tampa Electric's Motion for Extension of Time to File Testimony is denied. The procedural schedule cannot accommodate a two week extension of time to file testimony. However, because Cargill did not fully produce the responsive documents to Tampa Electric's First Request for Production of Documents until September 4, 2003, Tampa Electric shall be granted a two day extension of time in which to file its testimony. Cargill's due date for filing rebuttal testimony shall be adjusted commensurately. Therefore, the following revised dates shall now govern this case.

- 1) Tampa Electric's direct testimony and exhibits/staff's direct testimony and exhibits, if any September 19, 2003

- 2) Rebuttal testimony and exhibits October 3, 2003

The parties are cautioned that Prehearing Statements remain due on October 1, 2003.

It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Tampa Electric's Motion to Compel Production of Documents (Nos. 1-16) is granted. To the extent that there may be any documents still outstanding, Cargill shall produce those documents by September 8, 2003, to Tampa Electric's offices. It is further

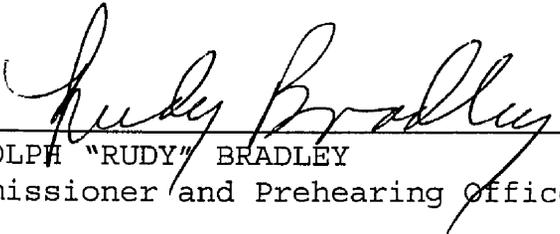
ORDERED that Tampa Electric's Motion for Extension of Time to File Testimony is denied. It is further

ORDERED that the controlling dates established by Order No. PSC-03-0866-PCO-EQ, and revised by Order No. PSC-03-0909-PCO-EQ, are modified as set forth in the body of this Order. It is further

ORDERED that Order Nos. PSC-03-0866-PCO-EQ and PSC-03-0909-PCO-EQ are reaffirmed in all other respects.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 8th day of September, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such

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review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.