

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of appropriate cost allocation and regulatory treatment of total revenues associated with wholesale sales to Florida Municipal Power Agency and City of Lakeland by Tampa Electric Company.

DOCKET NO. 970171-EU  
ORDER NO. PSC-97-1095-PCO-EU  
ISSUED: September 22, 1997

ORDER DENYING MOTION TO FILE SUPPLEMENTAL BRIEF

On July 16, 1997, Tampa Electric Company (TECO) filed a Motion For Leave To File Supplemental Brief and a Supplemental Brief in this Docket. The Office of Public Counsel (OPC), and the Florida Industrial Power Users Group (FIPUG) filed a Joint Response In Opposition To Tampa Electric Company's Motion For Leave To File Supplemental Brief.

The Order Establishing Procedure in this Docket, Order No. PSC-97-0350-PCO-EU, issued March 27, 1997, required that briefs be filed on July 7, 1997. TECO, OPC and FIPUG filed briefs on the due date.

TECO's Motion is a request to file a supplemental brief on Issue 9, the jurisdiction issue in the docket propounded by OPC. All of the issues in the docket were agreed upon by the parties on April 18, 1997. In its' Motion, TECO states that OPC's brief presents cases and arguments which had not been previously presented in the docket and TECO thus had not had an opportunity to fully respond to OPC's arguments. TECO does not allege procedural due process infirmity or prejudice.

In their Response In Opposition, OPC and FIPUG make several arguments against the supplemental filing. They state that the Motion is not authorized by the Commission's procedural rules or the Order Establishing Procedure. They also state that the parties understood that, since Issue 9 was a legal issue, the only opportunity to address it would be in the briefs. The normal practice, they state, is to offer argument and cases supporting your position and to anticipate and distinguish argument and cases opposing counsel may rely upon. TECO's decision to address the

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issue in only summary fashion was binding upon the company. Finally, OPC and FIPUG assert that to grant the Motion would set bad precedent for allowing a reply brief any time a party relies on case law not explicitly provided to the adverse party in advance of the filing.

OPC and FIPUG's arguments are well taken. There was ample opportunity for all of the parties to research and respond to the legal issue. To allow supplemental briefs in this case would unduly prejudice other parties in the docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Tampa Electric Company's Motion For Leave To File Supplemental Brief is denied.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 22nd day of September, 1997.

  
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J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

LJP

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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, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 Records and Reporting, 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 review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.