

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company and impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.

DOCKET NO. 010577-EI
ORDER NO. PSC-01-2065-PCO-EI
ISSUED: October 19, 2001

ORDER VACATING ORDER GRANTING MOTION TO COMPEL

On October 2, 2001, I issued Order No. PSC-01-1965-PCO-EI granting the Commission Staff's motion to compel discovery in this docket. For the reasons set forth below, I now vacate that order.

By its Motion to Compel filed September 27, 2001, the Staff sought an answer to its Interrogatory No. 78 dealing with benefits accruing to Florida from Tampa Electric Company's (TECO) participation in a Regional Transmission Organization (RTO). TECO responded that the material was not discoverable under Rule 1.280(b)(4)(B), Florida Rules of Civil Procedure. That Rule protects the materials developed by not-to-be-called experts under the attorney work product privilege, absent a showing of "exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means".

I agreed with TECO that Rule 1.280(b)(4)(b) was the applicable rule. I found, however, that under the unique circumstances of this case the Staff's request met the exceptional circumstances test necessary to compel discovery. That conclusion was supported not only by considerations of the unusual subject matter of this case and the restricted time periods for discovery, but also the Staff's asserted urgent need for the information to be available at the hearing. TECO produced the requested interrogatory response in accordance with my Order.

Staff did not introduce or make use of any part of the interrogatory at the hearing held October 3-5, 2001. It is, therefore, apparent that one of the major premises underlying the necessity for producing the otherwise protected material was not in

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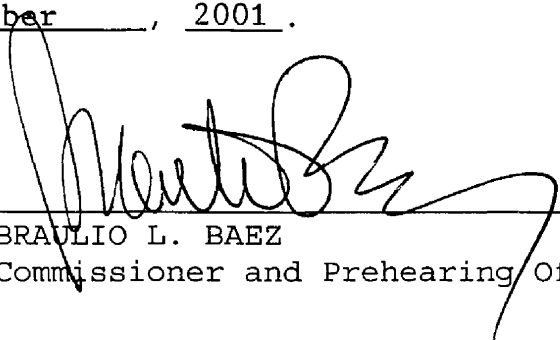
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fact realized. In consideration of this fact, and in recognition of the unusual reach of the Order to Compel, I find the Order should be vacated.

It is therefore,

Ordered that Order No. PSC-01-1965-PCO-EI be and the same is hereby vacated.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 19th day of October, 2001.



BRAULIO L. BAEZ
Commissioner and Prehearing Officer

(S E A L)

DES

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.

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