

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company's waterborne transportation contract with TECO Transport and associated benchmark

Docket No. 031033-EI
Filed May 21, 2004

STATE OF FLORIDA
COUNTY OF LEON

AFFIDAVIT IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

BEFORE ME, the undersigned authority, personally appeared, WALTER DARTLAND, who, having been by me first duly sworn, deposes and says:

- 1. My name is Walter Dartland. I am the Executive Director of Consumer Federation of the Southeast, Inc. As such, I have personal knowledge of the facts stated in this Affidavit.
2. On the late evening hours of May 19, 2004, I returned from traveling in Europe to discover that a subpoena directed to me in my capacity as Executive Director of CFSE had been delivered to my wife on May 13, 2004, at our place of residence.

3. The subpoena required me to appear at the offices of TECO's attorneys the following

AMP morning, May 20, 2004, and to produce a variety of CFSE's records.

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4. Because I had just returned from a lengthy overseas trip and had had no opportunity

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CR to review the papers, consult with an attorney, gather the requested documents, or even to recover

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from jet lag, I called TECO's attorneys at the offices of Ausley McMullen at approximately 9:15

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a.m. on May 20, 2004, and advised them that I would not appear for the deposition, but that I would

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be back in touch with them at a later time.

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DOCUMENT NUMBER-DATE

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5. Among the mail that arrived in my absence was a letter dated May 13, 2004, from TECO Attorney John Fons of Ausley McMullen stating that he was aware I was traveling in Europe and would not return until the evening of May 19, 2004. Mr. Fons stated he would agree to reschedule the deposition at a later time.

6. Mr. Fons' letter enclosed a "Notice of Intent to Serve Subpoena" pursuant to Rule 1.351, which I am aware provides that the proposed discovery will not take place if any party objects, and that the subpoena pursuant to this rule should not be served until after the parties have had ten days to object.

7. The subpoena attached to Mr. Fons' letter was directed to "CorpDirect." as Registered Agent for CFSE, but was otherwise identical to the subpoena delivered to my wife.

8. On the morning of May 20, 2004, I ascertained that both the subpoena attached to Mr. Fons' letter and the subpoena served on my wife had been filed with the Commission pursuant to Rule 1.351, and that the Residential Customers had objected to the proposed subpoena.

9. I was never served with a subpoena directed to me individually, but only in my capacity as a corporate officer.

10. On the evening of May 20, 2004, I was served with an amended subpoena directed to me as Executive Director of CFSE, for deposition on May 24, 2004 at 10:30 a.m. The amended subpoena seeks the same documents. On May 21, 2004, I received from CorpDirect an amended subpoena served on CorpDirect as registered agent for CFSE noticing a corporate deposition at the same time and seeking the same documents.

11. The documents sought include financial records and contribution records that are confidential, proprietary and trade secret to CFSE, disclosure of which would create a chilling effect on further contributions to CFSE.

12. The documents requested are irrelevant to the issues in the case, which relates to the reasonableness of TECO's projected coal transportation costs and related issues.

13. Any documents I or CFSE have created in conjunction with parties to the case would be work product in the hand of such parties. Such documents include the analyses requested from potential expert witnesses who the parties ultimately decided not to call as witnesses.

14. The rescheduled date of May 24, 2004 does not allow me or CFSE sufficient time to gather the requested documents, consult with counsel to prepare for my testimony, to obtain advice as to privilege and confidentiality issues, or to prepare privilege logs if deemed necessary.

15. I am concerned that the deposition would cover matters not within my knowledge as Executive Director and therefore it is important that I be advised in advance of the areas of inquiry so that I may determine whether any other person associated with CFSE has knowledge of the proposed areas of inquiry.

16. I was able to retain counsel for myself and CFSE to respond to the subpoena on an expedited basis, however, my counsel advises me that she is not available to come to Tallahassee on May 24, 2004 or to review the documents or to perform other steps necessary to adequately represent at the deposition.

FURTHER AFFIANT SAITH NOT.

Walter Dartland

SWORN TO and SUBSCRIBED before me before me this 21 day of May, 2004, by Walter Dartland, Executive Director of Consumer Federation of the Southeast, Inc, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced a Florida Driver's License as identification and did (did not) take an oath.

S/ Stacy B. Boutwell
Signature of NOTARY PUBLIC
State of Florida at Large

Stacy B. Boutwell #DD222505 exp. Jun. 12 2007

Print, Type, or Stamp Commissioned Name of
Notary and Date Commission Expires