

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the effect)	DOCKET NO. 871206-PU
of the 1986 Federal Tax Reform for)	ORDER NO. 20799
1988)	ISSUED: 2-23-89

ORDER COMPELLING PRODUCTION OF
DOCUMENTS FOR INSPECTION

On October 20, 1988, the Office of the Public Counsel (OPC) served its First Set of Requests for Production of Documents (the Requests) on GTE Florida Incorporated (GTEFL). In summary, the Requests seek documents: (1) shown to Commissioners or Commission staff members concerning this docket (First Request); (2) indicating GTEFL's current cost of equity (Second Request); (3) evaluating or discussing Commission Rule 25-14.003, Florida Administrative Code (Third Request); and (4) projecting or evaluating earnings, return on equity or return on rate base during 1988 or 1989 (Fourth Request).

On December 9, 1988, GTEFL filed a Response and Objections to the Requests (the Objections). GTEFL asserts four general objections to OPC's discovery request. With respect to the documents sought, the Objections allege that these documents are either privileged or proprietary. The Objections complain that the Requests are overbroad and seek material that is neither discoverable nor relevant. In addition to these general objections, the Objections claim that GTEFL has no documents responsive to the First Request and will provide documents sought by the Third Request. GTEFL offers to produce summary information for 1988 and 1989 that is responsive to the Fourth Request but objects to producing documents responsive to the Second and Fourth Requests on grounds that they are neither relevant nor related to the issues in this proceeding.

On December 13, 1989, OPC filed a Motion to Compel, Request for Hearing and Request for In Camera Inspection of Documents (Motion to Compel). With respect to GTEFL's allegation that documents sought by OPC are privileged, OPC complains that GTEFL has failed to identify these documents and to furnish specific information about them, including the basis upon which privilege is asserted. OPC points out that not all communications between lawyers and clients are privileged. OPC requests that either the objection of privilege be stricken by the Commission or that GTEFL be ordered to produce the subject documents for an in camera inspection by the Commission to determine the validity of GTEFL's claim.

Concerning GTEFL's objection that the material sought is proprietary, the Motion to Compel states that GTEFL has disregarded Commission Rule 25-22.006, Florida Administrative Code (the Confidentiality Rule), through failing to file for a protective order. Accordingly, OPC believes that GTEFL has waived its right to object to the Requests. Assuming that no waiver has occurred, OPC charges that GTEFL has failed to provide the detailed justification required by the Confidentiality Rule. For these reasons, OPC asks that GTEFL be compelled to produce the documents for which it claims confidentiality.

DOCUMENT NUMBER-DATE

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Based upon a lack of specificity, GTEFL's general objection that the Requests are overbroad should be stricken, in OPC's opinion. Similarly, OPC urges the Commission to strike GTEFL's general objection that the Requests are not reasonably calculated to lead to the discovery of admissible evidence or relevant.

On December 27, 1988, GTEFL filed a Response to OPC's Motion to Compel (the Response) requesting that OPC's pleading be denied. The Response argues that, in general, every document in the possession of GTEFL is covered by the Requests and that, in one instance, the Requests seek voluminous documents which are spread throughout its service territory. GTEFL charges that OPC has failed to meet its burden of showing the requested material's relevancy to the subject matter of this proceeding. The Response states that GTEFL has raised its general objections in order to foreclose any allegation that the company has waived its right to object through producing the documents in response to the Second and Fourth Requests as a means of expediting the proceeding. The Response defends GTEFL's employment of an objection to discovery as an appropriate substitute for a motion for protective order which has been sanctioned by the courts and accepted by the Commission.

GTEFL believes that the First and Third Requests have been satisfied. With regard to the Second and Fourth Requests, the Response alleges that documents pertaining to return on equity and earnings are irrelevant to this proceeding. In GTEFL's view, the subject matter of this proceeding is tax savings associated with the Tax Reform Act of 1986, not the settlement offer made by the company in this docket proposing a return on equity for 1988. Moreover, the company alleges that it has disposed of the 1988 tax savings associated with the Tax Reform Act of 1986 and is committed to do so for 1989 tax savings. As a result, the Response argues that the Second and Fourth Requests seek return-on-equity and earnings documents that are irrelevant to this proceeding.

The Response further charges that the Fourth Request is "overbroad, burdensome, oppressive, vague, ambiguous, and imprecise" because it seeks every GTEFL document relating to projections or evaluations of earnings, return on equity or return on rate base in 1988 and 1989. GTEFL complains that OPC submitted a request similar to the Fourth Request in a different docket which took the company three weeks to satisfy by producing some 24 linear feet of documents containing over 25,000 pages at a cost of more than \$12,000. Such discovery abuse should not be condoned by the Commission, according to GTEFL.

The balance of the Response deals with problems that GTEFL perceives to be attendant to current discovery procedures. Because of the difficulty associated with the handling of confidential material, the Response charges that GTEFL must not respond to irrelevant requests and thus discovery will be slowed down. Accordingly, the company requests that new discovery procedures be put into place to govern this docket. Specifically, the Response asks that materials sought to be discovered by OPC be permitted to stay within GTEFL's

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possession with access being afforded to OPC by the company. Under procedures proposed in the Response, GTEFL would make the requested documents available to OPC in the company's offices in Tallahassee under reasonable conditions.

This contrasts with current practice where the material is filed with the Commission along with a request for confidential specification that leads to a ruling even though the documents may never be introduced into evidence at a hearing. The Response points out that there is no requirement that the requested documents be filed with the Commission; indeed, Rule 1.350 of the Florida Rules of Civil Procedure provides that documents sought to be discovered need not be filed with the Court. In GTEFL's opinion, the practice of filing documents with the Commission in order to gain confidential classification for them has led to the needless effort of classifying documents that are not needed for litigation. If GTEFL's proposal is approved, the Commission would rule on the confidentiality of only those documents that are submitted in evidence and used as a basis for the Commission's decision; all other documents would remain in the company's possession.

GTEFL further proposes that, in reviewing the requested documents, OPC be made subject to a blanket protective order granted by the Commission in accordance with Rule 1.280 of the Florida Rules of Civil Procedure. To receive a blanket protective order, GTEFL would have the burden of making an initial threshold showing that the documents should remain confidential. Under a blanket protective order, the parties and the Commission would be relieved of the requirement that each document be examined on a page-by-page basis to determine the material in each document which should be kept confidential.

Only after OPC has reviewed all documents that it seeks and selected those that it wishes to use at hearing will the Commission be called upon, under GTEFL's plan, to settle the controversy as to whether the selected documents should be specified confidential. In this way, GTEFL argues that it can comply with production requests which are unreasonably burdensome in an effort to aid the discovery process. Finally, GTEFL asserts that it will be compelled "to move for lengthy extensions of time in which to comply" if its proposed procedures to govern discovery are not adopted.

Upon review, the Prehearing Officer denies the Objections filed by GTEFL and compels the company to produce for inspection the documents sought by OPC in the Requests. Such production shall take place in GTEFL's Tallahassee offices within ten days of the issuance of this Order. The scope of this docket is not as limited as claimed by GTEFL, and the company has failed to show the irrelevancy of the requested documents to the issues that the Prehearing Officer considers germane to this proceeding. Additionally, without a more specific showing from GTEFL that the documents sought by OPC qualify for confidential classification, good cause has not been shown by GTEFL in support of an order denying the Requests.

In light of this action ordering GTEFL to afford OPC access to the documents, the Prehearing Officer denies OPC's request for a hearing and an in camera inspection of the documents contained within the Motion to Compel. With one

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exception, the discovery procedures proposed in the Response are rejected as premature. GTEFL is not however required to deliver the documents, or copies of them, into the possession of OPC; rather, the company shall make them available on a reasonable basis for inspection at its Tallahassee offices. GTEFL shall produce these documents for review upon OPC's entering into an arrangement to protect their confidentiality until such time as a ruling on particular documents is requested from the Commission.

When OPC has had an opportunity to review the documents being sought and thereafter requests possession of a GTEFL document that would become a "public record" under Chapter 119, Florida Statutes, then a protective order may be sought by GTEFL for the purpose of exempting that document from public disclosure. Upon a proper showing by the company that a requested document qualifies for such an exemption, the Commission may grant a protective order; however, it is premature now to grant a blanket protective order covering all documents being sought.

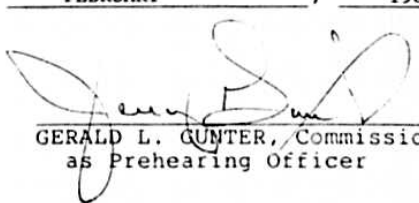
Therefore, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that the GTE Florida Incorporated's Response and Objections to Citizens' First Set of Requests for Production of Documents filed December 9, 1988, is hereby denied. It is further

ORDERED that the Office of the Public Counsel's Motion to Compel, Request for Hearing, and Request for In Camera Inspection of Documents filed December 13, 1988, is hereby granted to the extent discussed in this Order and is hereby denied in all other respects. It is further

ORDERED that GTE Florida Incorporated's Response to Public Counsel's Motion to Compel, Request for Hearing, and Request for In Camera Inspection of Documents filed December 27, 1988, is hereby granted to the extent discussed in this Order and is hereby denied in all other respects.

By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 23rd day of FEBRUARY, 1989.



 GERALD L. GUNTER, Commissioner
 as Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

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 25-22.038(2), 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 sewer 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.