

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Cargill Crop Nutrition, Inc., f/k/a Cargill Fertilizer, a subsidiary of Cargill Corporation, against Verizon Florida Inc. for enforcement of FCC orders and Florida Public Service Commission decisions eliminating application of tariff charges for complex inside wiring, and request for relief.

DOCKET NO. 030746-TP  
ORDER NO. PSC-03-1305-PCO-TP  
ISSUED: November 14, 2003

ORDER GRANTING MOTION TO AMEND ARBITRATION PETITION

On August 1, 2003, Cargill Crop Nutrition, Inc., f/k/a Cargill Fertilizer ("Cargill") filed a Complaint against Verizon Florida Inc. d/b/a Verizon Communications ("Verizon") for enforcement of Florida Public Service Commission ("FPSC") Order No. PSC-97-0385-FOF-TL that eliminates the regulated-charges under Verizon General Service Tariff 113.2, Extension Line Channel as applied to Cargill's Riverview, Florida location and refund of all monies with interest paid since April 15, 1993. On August 26, 2003, Verizon filed its Response to Cargill's petition. On October 31, 2003, Cargill filed a Motion to Amend its Complaint against Verizon (hereinafter "Motion") to clarify its relief sought in this docket. Verizon did not file a response to Cargill's Motion.

In its Motion, Cargill requests that it be allowed to amend its Complaint to clarify its intent with respect to (i) what enforcement action was requested by Cargill; and (ii) what amount of tariff refund was requested. With regard to subsection "i," Cargill states that it would like the FPSC to issue an order that applies the same reasoning used in support of FPSC Order No. PSC-97-0385-FOF-TL. With regard to "ii," Cargill seeks to amend its Complaint so that it is consistent in its request for a tariff refund from April 1993 to September 2003. It is Cargill's belief that these changes will help all parties to this docket during the issue identification process. Further, Verizon advised the Commission staff that it did not oppose the motion, hence no response was filed.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Pursuant to Rule 28-106.202, the petitioner may amend its petition after the designation of the presiding officer and only upon the order of the presiding officer. The longstanding policy in Florida, and of this Commission in particular, is to allow pleadings to be freely amended so that disputes may be resolved on their merits.<sup>1</sup> In addition, it is also well-established that the Commission has broad discretion to allow amendment of pleadings, if the privilege to amend has not been abused.<sup>2</sup>

In light of the above, I find that Cargill has not abused its privilege, and that Cargill's uncontested motion to amend its complaint will better enable the Commission to decide the matter based on the merits of the case. Lastly, I hold that although Verizonis did not file a response to Cargill's Motion, Verizon is afforded the opportunity to file an answer to Cargill's amended complaint.

In conclusion, Cargill's motion to amend its complaint is granted, and Verizon has twenty (20) calendar days from the issuance of this Order to file an answer to Cargill's amended complaint.

Based on the foregoing,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Cargill Crop Nutrition, Inc. f/k/a Cargill Fertilizer's Motion to Amend it Complaint, is hereby granted. It is further

ORDERED that Verizon Florida Inc. d/b/a Verizon Communications has twenty (20) calendar days from the issuance of this Order to file an answer to the amended complaint.

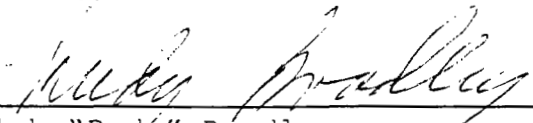
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<sup>1</sup>See Adams v. Knabb Turpentine Co., 435 So.2d 944, 946 (Fla. 1<sup>st</sup> DCA 1983).

<sup>2</sup>FPSC Order No. PSC-01-1168-PCO-TP.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 14th Day of November, 2003.

  
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Rudolph "Rudy" Bradley  
Commissioner and Prehearing Officer

( S E A L )

JLS/FRB

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

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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.