



# Public Service Commission

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 24, 1997

**TO:** Mr. Jim McGee, Esquire - Florida Power Corporation  
Mr. Matthew Childs, Esquire - Steel Hector & Davis  
Mr. Roger Howe, Esquire - Office of Public Counsel

**FROM:** Wm. Cochran Keating, IV - Staff Counsel, Division of Legal Services *WCK*

**RE:** Docket No. 97094-EPQ - Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd., by Florida Power Corporation

**Via Facsimile**

The following is the Home Shopping Network v. GTE order cited in Staff's Objections to OCL's Notice of Taking Deposition.

WCK/js

cc: Judy Harlow  
Paul Stallcup  
Key Flynn

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FPSC-RECORDS/REPORTING

IN THE CIRCUIT COURT IN AND FOR PINELLAS COUNTY, FLORIDA

HOME SHOPPING NETWORK, INC.,  
Plaintiff,

vs.

GTE CORPORATION, GTE FLORIDA, INC.,  
and GTE COMMUNICATIONS CORPORATION,  
Defendants,

CASE NO. 87-014199-7

ORDER QUASHING SUBPOENAS AND NOTICES TO TAKE DEPOSITION

Plaintiff Home Shopping Network was a party to a proceeding before the Florida Public Service Commission. The proceeding arose from a direct referral of certain questions to be answered by the Commission through a referral order from this Court by analogy to the case of Southern Bell Telephone vs. Mobile America Corporation, Inc., 291 So.2d 100, decided by the Supreme Court of Florida in 1974.

Before the Court at this point is a Motion to Quash Subpoenas Duces Tecum and Notices of Deposition directed to the Commission and its individual Commissioners which Plaintiff Home Shopping Network has caused to issue.

The trial courts of Florida have inherent power to control the use of process, both to prevent abuses of the same, just as they would in the case of an improvident issuance of process. Here it makes little difference which approach is used, since both objections are equally applicable. Plaintiff at all times had full and adequate notice of the various proceedings before the Commission together with rights to offer evidence and cross-examine witnesses. The record before the Commission is replete with these opportunities which require no further comment to decide the now pending issue as to the validity of the process plaintiff now seeks to invoke.

At bar, the Court is of the opinion that when on the record of proceedings duly had in compliance with due process of law, a duly constituted administrative agency of the sovereign state of Florida (or its agencies, be it county, municipal, or a special taxing district) makes a formal determination, that such adjudication becomes an official action independent of the several acts of the board members. This solemn result, therefore, becomes the object for assault by appeal or petition for review, separate and apart from the thought process of the assenting or dissenting members and their individual feelings as to why he or she may have voted for or otherwise taken the official action of that agency. Absent fraud or some other patent equivalent act of misfeasance or malfeasance, the final decision may not be collaterally attacked through the thought processes of the members.

Therefore, for the foregoing reasons, it is

**ORDERED and ADJUDGED** as follows:

That the subpoenas duces tecum and the Notices to Take Depositions are hereby quashed.

Done and Ordered in chambers at Clearwater, Pinellas County, Florida, this 27<sup>th</sup> day of June, 1999.



**HOWARD P. RIVES, Circuit Judge**