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ROBERT A. BUTTERWORTH
Attorney General
State of Florida

September 4, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

Re: Docket No. 980733-TL

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket please find an original and ten copies of Attorney General Robert A. Butterworth's Motion To Compel Discovery Responses From GTE, For Expedited Ruling, And Request For Oral Argument.

Thank you for your courtesies.

Sincerely,

Michael A. Gross
Assistant Attorney General
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PL-01 The Capitol

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CAF _____
CMU _____ Enclosures

CTR cc: All parties of record

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6. In order to make its calculation to support its erroneous contention, GTE has unilaterally refused to acknowledge the Attorney General's Notice of Withdrawal of a substantial number of its interrogatories. These interrogatories were withdrawn, because the information was contained in documents previously made available by GTE, and it was not necessary for GTE to answer them.

7. GTE has filed objections to a substantial number of the Attorney General's First Set of Interrogatories, and the Attorney General's Motion to Compel is presently pending.

8. GTE now claims that although it has objected to a substantial portion of the Attorney General's discovery and has yet to respond in any manner other than by objections, it has nonetheless expended time and effort to answer the Attorney General's discovery. Further, GTE indicates that it will answer the Attorney General's withdrawn discovery, so that it can avoid answering later discovery not withdrawn.

9. GTE's position is flawed on several grounds. Its contention that it has expended considerable time and effort to answer interrogatories cannot be reconciled with its written objections to a substantial portion of the interrogatories. Objections normally indicate an intention not to answer.

10. Moreover, it seems a waste of time and effort chargeable to GTE for GTE to answer interrogatories which have been withdrawn. Accordingly, GTE's proposal to answer withdrawn interrogatories is an imprudent use of resources. Also, it is possible that GTE may withdraw some objections. At the very least, GTE reserves the right to withdraw its objections, just as the Attorney General can withdraw its discovery.

11. If carried to its logical conclusion, GTE's argument would preclude it from withdrawing any objections, leading to an absurd result. Clearly, the Attorney General would not insist that

GTE argue its objections if GTE chose to withdraw them, even though the Attorney General has expended time and effort to file its Motion to Compel. Consequently, GTE will answer withdrawn discovery at its own peril in relation to calculating the discovery limits.

12. Additionally, it seems spiteful in these circumstances to persist in answering discovery which has been withdrawn.

13. GTE's claim that it expended considerable time and effort in preparing answers to the withdrawn discovery cannot be reconciled with the fact that the information requested is easily ascertainable from data already compiled by GTE. This is precisely the reason why the discovery was withdrawn.

14. Withdrawal of discovery under such circumstances is entirely appropriate, and the Attorney General expressly denies that it has exceeded its limit on interrogatories. Even assuming for the sake of argument that the Attorney General must be charged with the withdrawn discovery in calculating its limits, the Attorney General would in any event exceed the limit on interrogatories by about 10, i.e., even if withdrawn interrogatories are counted.

15. Relevant to this discovery dispute is the fact that the Attorney General has a balance in excess of 100 requests for production even without adjusting downward for its withdrawn requests for production. The Attorney General could have converted many interrogatories to requests for production which are clearly more burdensome than interrogatories. The Order on Procedure permits modification of the discovery limits. As an alternative solution, the Attorney General points out that it is well within the total limit of 300 discovery requests, and requests a modification of the discovery limits to permit a total of 300 interrogatories and requests for production, but without requiring a 50-50 ratio. Certainly, 150 requests for production would be more burdensome than an equal number

of interrogatories.

16. GTE cannot make a good faith argument that the Attorney General's discovery is burdensome, when the Attorney General has used only 200 out of potentially 300 discovery requests and has weighted its discovery toward less burdensome interrogatories.

WHEREFORE, the Attorney General respectfully requests oral argument and expedited ruling compelling GTE to answer interrogatories and rejecting GTE's unilateral attempt to disregard the Attorney General's withdrawal of discovery, or alternatively modifying the permissible ratio of interrogatories and requests for production within the total limit of 300.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile to those noted (*) and by U.S. Mail this 4~~th~~ day of September, 1998, to the following:

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A handwritten signature in black ink, appearing to read 'M. A. Gross', written over a horizontal line.

MICHAEL A. GROSS
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