

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Tampa Electric Company and impact of its participation in GridFlorida, a Florida Transmission Company, on TECO's retail ratepayers.

DOCKET NO. 010577-EI

FILED: September 27, 2001

MOTION TO COMPEL

The Staff of the Florida Public Service Commission by and through its undersigned counsel moves the Commission to compel Tampa Electric Company to respond to Staff's Third Set of Interrogatories to Tampa Electric Company (No. 78) pursuant to Rule 1.380, Florida Rules of Civil Procedure.

1. On September 10, 2001, the Staff of the Florida Public Service Commission (FPSC) served Tampa Electric Company (TECO) with Staff's Third Set of Interrogatories to Tampa Electric Company (No. 78). Interrogatory No. 78 requested information as follows:

Refer to page 27, lines 11-12 of Witness Hoecker's testimony. Has TECO, or any entity known to TECO, calculated the approximate dollar benefit to Florida from an RTO? If TECO has made such a calculation, please provide the results of the calculation, stating all assumptions. If another entity known to TECO has made the calculation, please identify that entity and, if known, the results of its calculations.

2. On September 18, 2001, TECO filed its objections to Interrogatory No. 78. TECO objected on grounds of attorney-client privilege, work product privilege, "or other applicable privilege."

3. This proceeding involves a determination of whether the formation of the GridFlorida RTO is prudent. At this time, the

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only benefits of the RTO of which Staff is aware are qualitative. Staff has no quantitative measure of benefits, although it does have quantitative measures of costs. Any quantitative assessment of the benefits of the RTO are needed for Staff to make an informed recommendation to the Commission.

4. The information requested in Interrogatory No. 78 is highly relevant to the subject matter of the proceeding and is within the scope of discovery. Rule 1.280(b)(1), Florida Rules of Civil Procedure allows discovery of information relevant to the subject matter of the pending action.

5. Rule 1.280(b)(5), Florida Rules of Civil Procedure, provides that when a party responds to a discovery request with a claim of privilege, the party "shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." TECO provided no such description and should be required to do so.

6. When a party claims an attorney-client privilege, that party carries the burden of proof to demonstrate that the documents meet the criteria for the privilege. See Southern Bell Telephone and Telegraph Co. v. Deason, 632 So. 2d 1377, 1384 (Fla. 1994); see also Order No. PSC-01-1725-PCO-EI, issued on August 23, 2001, in Docket No. 010827-EI.

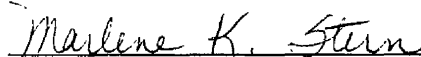
7. TECO offered no explanation as to why the information in its possession was subject to the attorney-client privilege. TECO failed to comply with the minimum requirements of the law in that it produced no description of the documents and did not demonstrate why the documents met the criteria for the attorney-client

privilege. Given that the hearing is less than one week away, and TECO failed to carry its burden of proof, TECO should be required to produce the documents to Staff. Alternatively, TECO should be required to produce the documents for an *in camera* review immediately.

8. Rule 1.280(b)(3), Florida Rules of Civil Procedure, provides that a party may obtain work product documents "only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Staff needs the materials to fully assess the benefits of the RTO. Staff has no quantitative measure of the RTO's benefits and is aware of no other source from which to obtain the information. None of the parties to this or the other RTO dockets has such information. TECO is the only party that has access to the needed information.

WHEREFORE, Staff moves the Florida Public Service Commission for an Order compelling TECO to produce the information requested in Staff's Third Set of Interrogatories to Tampa Electric Company (No. 78), or alternatively, to produce the information for *in camera* review, along with the description required by Rule 1.280(b)(5), Florida Rules of Civil Procedure.

Respectfully submitted,



MARLENE K. STERN
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6230

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of Staff's Motion to Compel to TAMPA ELECTRIC COMPANY has been furnished by U.S. Mail to Lee Willis and James Beasley, Ausley and McMullen, P.O. Box 391, Tallahassee, Florida 32302, on behalf of Tampa Electric Company, and that one true and correct copy has been furnished by U. S. Mail this 27th day of September, 2001, to the following:

Ms. Angela Llewellyn
Tampa Electric Company
Regulatory Affairs
P.O. Box 111
Tampa, FL 33601-0111

Katz, Kutter Law Firm
Bill Bryant, Jr., Natalie Futch
12th Floor
106 East College Avenue
Tallahassee, FL 32301

McWhirter Law Firm
Joseph McGlothlin/Vicki Kaufman
117 S. Gadsden Street
Tallahassee FL 32301

Office of Public Counsel
John Roger Howe
c/o The Florida Legislature
111 W. Madison St., #812
Tallahassee, FL 32399-1400

Florida Industrial Powers Users
Group
c/o John W. McWhirter, Jr.
McWhirter Law Firm
P.O. Box 3350
Tampa, FL 33601-3350

Landers Law Firm
Diane K. Kiesling
P.O. Box 271
Tallahassee, FL 32302

Moyle Law Firm
Jon C. Moyle/Cathy M. Sellers
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

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Marlene K. Stern

MARLENE K. STERN

Staff Counsel

FLORIDA PUBLIC SERVICE COMMISSION

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399-0850

(850) 413-6230