

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Cargill
Fertilizer, Inc. for permanent
approval of self-service
wheeling to, from, and between
points within Tampa Electric
Company's service area.

DOCKET NO. 020898-EQ
ORDER NO. PSC-03-0945-PCO-EQ
ISSUED: August 20, 2003

ORDER PROVIDING CLARIFICATION OF ORDER NO. PSC-03-0866-PCO-EQ,
AS MODIFIED BY ORDER NO. PSC-03-0909-PCO-EQ

On July 30, 2003, Tampa Electric Company (Tampa Electric) filed a Motion for Clarification of Order No. PSC-03-0866-PCO-EQ, the order establishing procedure, requesting that the Prehearing Officer confirm that all parties will have the opportunity to file rebuttal testimony, pursuant to that Order. In the alternative, Tampa Electric requests that the Prehearing Officer move the date it is required to file testimony rebutting Cargill Fertilizer, Inc.'s (Cargill) direct testimony to 15 days after Cargill fully answers discovery propounded by Tampa Electric with regard to Cargill's direct testimony. On August 5, 2003, Cargill responded opposing Tampa Electric's Motion for Clarification of Order No. PSC-03-0866-PCO-EQ.

Rule 28-106.211, Florida Administrative Code, grants broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case" Based upon this authority, and having considered the Motion and Response, the rulings are set forth below.

Tampa Electric seeks an order clarifying that Order No. PSC-03-0866-PCO-EQ permits all parties to file rebuttal testimony. The date for filing rebuttal testimony in Order PSC-03-0866-PCO-EQ was subsequently modified, along with the dates for both parties filing direct testimony, by Order No. PSC-03-0909-PCO-EQ, the first order modifying procedure, issued August 7, 2003. The date for filing rebuttal testimony was moved from September 24, 2003, to October 1, 2003. Each of Tampa Electric's arguments, Cargill's responses, and the attendant rulings are addressed separately below.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Tampa Electric's Motion

Based on the procedural schedule set forth in Order PSC-03-0866-PCO-EQ, as modified by Order PSC-03-0909-PCO-EQ, Tampa Electric requests confirmation of its understanding that all parties are free to file rebuttal testimony rebutting previously filed direct testimony. Tampa Electric states that if the Commission's expectation is that it will file both direct testimony and rebuttal to Cargill's direct testimony on the same date, then it requests a modification to the procedural schedule. Tampa Electric asserts that it anticipates Cargill will present testimony and exhibits that will require examination through discovery in order to be properly understood. According to Tampa Electric, it will not be in a position to rebut Cargill's direct testimony unless a reasonable opportunity for discovery is permitted.

Cargill's Response

Cargill responds that it opposes Tampa Electric's Motion for Clarification of Order No. PSC-03-0866-PCO-EQ. Cargill argues that allowing Tampa Electric to respond to its direct testimony twice would be a "most unusual procedure," giving Tampa Electric two opportunities to put on its case. Cargill states that it disagrees that the Order is unclear or justifies a new procedure for dealing with prefiled testimony. Cargill asserts that the clarification Tampa Electric seeks is violative of Cargill's due process rights. In response to Tampa Electric's argument that it will not have sufficient time to propound discovery and prepare its testimony if not permitted to file rebuttal testimony, Cargill states that this case has been pending for approximately one year and Tampa Electric has had ample opportunity to propound discovery and will continue to have that opportunity. Cargill requests that the Prehearing Officer clearly delineate that the burden of proving adverse impact on the general body of ratepayers rests with Tampa Electric, if it takes this position, since the statute and implementing regulations, as well as the Order in this docket, demonstrate that this is the correct posture of the case. Although Tampa Electric claims it must have completed discovery before it can file its testimony, Cargill argues that all the relevant information is already in Tampa Electric's possession. Cargill asserts that if the Prehearing Officer rules that Cargill has the burden of proof in this case, it should not be required to file its testimony until

15 days after it has received complete discovery responses from Tampa Electric as to all its outstanding discovery with respect to information required by the Commission's Cost-Effectiveness Manual.

Rulings on Tampa Electric's Motion

Upon review of the pleadings and consideration of the arguments, Tampa Electric's argument that all parties have the opportunity to file rebuttal testimony pursuant to Order No. PSC-03-0866-PCO-EQ, modified by Order No. PSC-03-0909-PCO-EQ, is rejected. As will be discussed below, Cargill has the burden of proof in this case, and in such circumstances the Commission generally does not allow all parties to file rebuttal testimony. Tampa Electric's request that its testimony not be due until 15 days after Cargill fully answers discovery propounded by Tampa Electric with regard to Cargill's direct testimony is denied due to the time constraints in this case. Pursuant to Order No. PSC-03-0909-PCO-EQ, Tampa Electric's direct testimony must be filed by September 17, 2003.

Rulings on Cargill's Response

Cargill's argument that Tampa Electric has the burden of proof in this case is rejected. The burden of proof rests with Cargill, as it is the party asserting the proposition to be proved. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974) and Heim v. Heim, 712 So.2d 1238 (Fla. 4th DCA 1998). Cargill's request that its testimony not be due until 15 days after it has received complete discovery responses from Tampa Electric as to all its outstanding discovery with respect to information required by the Commission Cost-Effectiveness Manual is denied. Pursuant to Order No. PSC-03-0909-PCO-EQ, Tampa Electric must respond to Cargill's Second Set of Discovery by August 20, 2003. Order No. PSC-03-0909-PCO-EQ also directed Cargill's direct testimony to be filed by September 3, 2003. Thus, Cargill's direct testimony will not be due until 14 days after it has received Tampa Electric's responses to its Second Set of Discovery.

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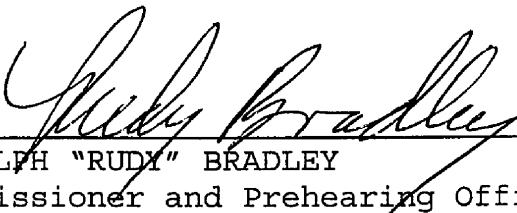
It is therefore,

ORDERED by Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, that Tampa Electric may not file rebuttal testimony on October 1, 2003, pursuant to Order No. PSC-03-0909-PCO-EQ. It is further

ORDERED that the burden of proof in this case rests with Cargill. It is further

ORDERED that Order Nos. PSC-03-0866-PCO-EQ and PSC-03-0909-PCO-EQ are reaffirmed in all other respects.

By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this 20th day of August, 2003.



RUDOLPH "RUDY" BRADLEY
Commissioner and Prehearing Officer

(S E A L)

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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

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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; or (2) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.