

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for rate increase by Tampa
Electric Company.

DOCKET NO. 130040-EI
ORDER NO. PSC-13-0415-PCO-EI
ISSUED: September 6, 2013

ORDER GRANTING IN PART AND DENYING IN PART
TAMPA ELECTRIC COMPANY'S MOTION TO COMPEL

The Order Establishing Procedure (OEP), Order No. PSC-13-0150-PCO-EI, in this docket was issued on April 8, 2013, setting forth the process for discovery. On July 26, 2013, Tampa Electric Company (Tampa Electric) served its First Requests for Admission (Nos. 1-10), Second Set of Interrogatories (Nos. 3-21), and Second Request for Production of Documents (Nos. 9-15) to WCF Hospital Utility Alliance (HUA). On August 15, 2013, HUA filed its responses and objections to Tampa Electric's requested discovery. HUA objected to all the requests for admission, interrogatories numbered 3-12, 15, 16, 19, and 20, and all the requested documents. On August 19, 2013, Tampa Electric filed a Motion to Compel Responses to Tampa Electric's First Request for Admissions (Nos. 1-10), Second Set of Interrogatories (Nos. 3-21) and Second Request for Production of Documents (Nos. 9-15) to HUA (Motion). Oral argument was heard at the Prehearing Conference on August 26, 2013, at which time, a formal ruling was rendered, with the acknowledgment that a written order would follow.

In its Motion, Tampa Electric argues that it is unable to properly prepare for the technical hearing due to HUA's objections and refusal to provide responses to the discovery. Tampa Electric argues that it needs the requested information to impeach the credibility of HUA witnesses, who criticized Tampa Electric for business practices used by HUA's hospitals. Tampa Electric also argues that the information sought relates to issues raised by HUA as to compensation, legal and O&M expenses, financials and budgets, and number of employees. Tampa Electric further argues that HUA should be compelled to respond to discovery requests regarding HUA's witness' testimony. Tampa Electric also argues that HUA improperly invoked the attorney-client privilege by failing to produce privilege logs for inspection. Finally, Tampa Electric, citing Rule 1.280(b)(1), Florida Rules of Civil Procedure (F.R.Civ.Pro), argues that the information sought only needs to be reasonably calculated to lead to the discovery of admissible evidence.

HUA argues that Tampa Electric bears the burden to prove that its proposed rates are fair, just, and reasonable under Florida law. HUA further argues that the discovery requests will not lead to admissible evidence because hospital operations and regulated electric utility operations are completely disparate, thus, the hospitals' costs, expenses, and business practices are irrelevant. HUA also argues that the discovery requests regarding Mr. Kollen's testimony are irrelevant, as Mr. Kollen has not challenged Tampa Electric's right to establish bonus and incentive compensation programs. Further, HUA argues that some of the discovery requests are overly burdensome and overbroad as they would have the hospitals gather years of data back to

the year 2000. Finally, HUA argues that the requests regarding attorneys' fees, contracts, and legal expenses of the hospitals are privileged information under the attorney-client privilege.

Pursuant to Rule 28-106,206, Florida Administrative Code, appropriate orders may be issued to effectuate the purposes of discovery and to prevent delay. The discovery rules are to be liberally construed so as to permit any form of discovery within the scope of the rules. Weyant v. Rawlings, 389 So. 2d 710, (Fla. 2nd DCA 1980). Rule 1.280(b)(1), F.R.Civ.Pro., provides that parties may obtain discovery of matters, not privileged, that are relevant to the subject matter of the pending action. Moreover, it is not grounds for objection that the information sought will be inadmissible at trial if the information appears reasonably calculated to lead to the discovery of admissible evidence. See: Fischer v. Hofmann Wholesale Nurseries, 487 So. 2d 413, (Fla. 4th DCA 1986); Calderbank v. Cazares, 435 So. 2d 377 (Fla. 5th DCA 1983). However, discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence. Poston v. Wiggins, 112 So. 3d 783, (Fla. 1st DCA 2013).

Having reviewed the arguments in Tampa Electric's Motion and in HUA's response, as well as the arguments espoused at the oral argument on August 26, 2013, the Motion is hereby denied in part and granted in part, as set forth below.

The Motion is denied as to the Requests for Admission Nos. 1-10. These requests concern the hospitals' incentive compensation and legal expenses. HUA's member hospitals' costs are not at issue in this docket; thus, the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

The Motion is denied as to Interrogatories Nos. 3 through 12. These interrogatories seek information concerning HUA's O&M expenses, employee compensation, legal expenses, and uncollected accounts. Again, HUA's costs are not at issue in this docket and the information sought is not reasonably calculated to lead to the discovery of admissible evidence. Further, some of the interrogatories seek information dating back to the year 2000, which could be unduly burdensome and overbroad, as well as irrelevant.

However, the Motion is granted as to Interrogatories Nos. 15, 16, 19, and 20 with limitations. The information sought concerns the testimony of HUA's witness, Mr. Kollen, regarding Tampa Electric's rate request. The information sought directly relates to the issues in this case and, thus, it is reasonably calculated to lead to the discovery of admissible evidence. However, the interrogatories are overbroad and burdensome as they ask for *all* Commission decisions. HUA shall be required to respond to the interrogatories to the extent the witness relied on specific Commission decisions. HUA shall file its response no later than Friday, August 30, 2013.

The Motion is denied as to the Requests for Production Nos. 9 through 15, with the exception of No. 14, as those requested documents were produced on August 23, 2013. The information sought concerns HUA's agreements, compensation, rate case expenses, financial

statements, and memoranda between HUA and its member hospitals. The documents sought are irrelevant and not calculated to lead to admissible evidence.

Based upon the foregoing, it is

ORDERED by Commissioner Julie I. Brown, as Prehearing Officer, that the Motion to Compel filed by Tampa Electric Company, is granted in part and denied in part, as set forth in the body of this Order. It is further

ORDERED that WCF Hospital Utility Alliance is hereby directed to respond to the discovery request deemed proper in this Order no later than August 30, 2013.

By ORDER of Commissioner Julie I. Brown, as Prehearing Officer, this 6th day of September, 2013.



JULIE I. BROWN
Commissioner and Prehearing Officer
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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 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 Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, 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.