

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Clarification) DOCKET NO. 920041-EI
and Guidance on Appropriate) ORDER NO. PSC-92-0380-PCO-EI
Market Based Pricing Methodology) ISSUED: 5/20/92
for Coal Purchased from Gatliff)
Coal Company by Tampa Electric)
Company.)
_____)

SUPPLEMENTAL ORDER ON PREHEARING PROCEDURE

On March 12, 1992, Order No. PSC-92-0055-PCO-EI was issued to establish the prehearing procedure for this case. That order directed the parties to prefile all direct testimony and exhibits that the parties intended to sponsor at the hearing. On April 7, 1992, the date intervenor direct testimony was to be filed, the Office of Public Counsel filed a document entitled "Public Counsel's Identification of Possible Witnesses." There Public Counsel explained that the nature of this particular case precluded him from prefiling direct testimony. Public Counsel stated that Tampa Electric Company's Petition presented no factual issues that he could properly address in prefiling direct testimony. Rather, his case would center around rebuttal of TECO's contention that its proposal was consistent with the stipulation approved by the Commission in TECO's cost-plus docket. Rebuttal would effectively consist of those witnesses that had been involved initially in the stipulation negotiations and the presentation of that stipulation to the Commission. Since those witnesses (Commission staff, attorneys for Tampa Electric Company, and Tampa Electric Company personnel) are not employed by Public Counsel they could not be compelled to prefile direct testimony on Public Counsel's behalf.

In order to inform the Commission and the parties of the nature of his case, Public Counsel submitted a list of the witnesses he intended to subpoena for the hearing.

Tampa Electric Company objected to Public Counsel's "Identification of Possible Witnesses" as unresponsive to the Order on Prehearing Procedure. TECO asked that Public Counsel be precluded from presenting at hearing any testimony in rebuttal to TECO's testimony.

Public Counsel has adequately demonstrated why he was unable to prefile direct testimony, and he has shown that it is not appropriate to require that he do so in this case. His identification of witnesses sufficiently informs the parties and the Commission of the nature of the testimony the rebuttal witnesses will provide. Rule 25-22.048(4)(a), Florida Administrative Code, does not require that evidence be submitted in the form of written testimony. It states;

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

ORDER NO. PSC-92-0380-PCO-EI
DOCKET NO. 920041-EI
PAGE 2

Evidence may be submitted in the form of written testimony... A presiding officer may require all parties to prefile testimony and shall provide reasonable notice to the parties of the date testimony shall be prefiled... (emphasis supplied)

It is noted that the parties' prehearing statements have been filed, and Public Counsel has identified the witnesses he intends to call and the subject matter of their testimony. The hearing in this case is scheduled for June 9, 1992, and TECO has time to depose Public Counsel's witnesses if it so chooses.

The circumstances of this particular case indicate that it is impractical to require Public Counsel to prefile testimony. Thus procedural Order No. PSC-0055-PCO-EI is superceded by this order, to the extent that it required Public Counsel to do so.

In addition, the staff of the Florida Public Commission has filed a motion to extend the time for filing direct testimony until May 22, 1992, with additional time for the petitioner to file rebuttal testimony by June 2, 1992. The parties have agreed to the extension of time. Staff's motion is granted. Staff will file testimony by May 22, 1992, with responsive testimony from Tampa Electric Company due by June 2, 1992.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 20th day of MAY, 1992.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

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