

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause Proceedings)
Against GTE Florida Incorporated for)
Violation of Service Standards)
_____)

Docket No. 991376-TL
Filed: February 16, 2000

ORIGINAL

**GTE FLORIDA INCORPORATED'S ANSWER TO
CITIZENS' RESPONSE AND OBJECTION TO
GTE'S REQUEST FOR A TEMPORARY PROTECTIVE ORDER**

On February 4, 2000, the Office of Public Counsel (OPC) filed a Response and Objection to GTE's Request for a Temporary Protective Order (OPC Response). OPC claims GTE has misread the Commission's confidentiality provisions. It is OPC, not GTE, that has misconstrued those provisions.

As OPC recites, it served requests for production of documents on GTE on September 20, 1999. GTE generally objected to the discovery in its entirety because it was filed prematurely. Nevertheless, in the spirit of cooperation, GTE agreed to produce documents in response to OPC's requests. GTE filed a notice of intent to request confidential classification of the documents.

On January 13, 2000, OPC filed a notice of intent to use at the hearing numerous documents GTE had produced to OPC. To ensure that those documents remained protected from public disclosure, GTE filed a request for temporary protective order, stating its understanding that Commission Rule 25-22.006(8)(b) requires it to file a specific request for permanent protective order within 21 days after the hearing if any of the confidential documents are admitted into the record.

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OPC claims that GTE has “misread” Rule 25-22.006(6)(c), and that this Rule requires GTE to seek a permanent protective order now for the items produced to OPC. (OPC Response at 2.) OPC quotes section 25-22.006(6)(c) in its Response:

(6) Discovery...

(c) When a utility or other person agrees to allow Public Counsel to inspect or take possession of utility information for the purpose of determining what information is to be used in a proceeding before the Commission, the utility may request a temporary protective order exempting the information from Section 119.07(1), F.S. If the information is to be used in a proceeding before the Commission, then the utility must file a specific request for a protective order under Paragraph (a) above. If the information is not to be used in a proceeding before the Commission, the Public Counsel shall return the information to the utility in accordance with the record retention requirements of the Department of State.

(OPC Response at 1-2, quoting rule 25-22.006(6)(c).)

GTE does not disagree that it must file a specific request for protective order, as the Rule states. However, the passage OPC quotes says nothing about *when* the specific request must be submitted. That directive appears in Rule section 25-22.006(8)(b), which states that when information subject to a claim of confidentiality “is admitted into the evidentiary record of a hearing,” the party claiming confidentiality “shall file a request for confidential classification within 21 days of the conclusion of the hearing” in order to maintain continued confidentiality.

OPC ignores this explicit prescription as to the time for filing a specific request for confidential classification. This provision directly controls the disposition of OPC's Response. Under the Rules, GTE is not required to file its

request until 21 days after the hearing, when it knows which documents OPC has used and which were admitted into evidence.

This last point is particularly apt here, as GTE produced the documents at a time when the Commission had not yet defined the time period or other parameters of this case. As such, GTE produced documents subject to specific objections to be made later. Some of those documents are outside the relevant time period eventually specified by the Commission in the Order setting this case for hearing. (Order No. PSC-99-2501-PCO-TL, Dec. 21, 1999.) Thus, GTE intends to object to their entry into the record, should OPC try to use them.

OPC notified GTE that it intends to use almost all of the documents GTE initially produced—about 2000 pages—and that further notices may be sent after GTE produces additional documents. (OPC's Notice of Intent to Use Documents, filed Jan. 13, 2000.) OPC would have GTE prepare specific requests for confidentiality for these documents now, before the hearing. A specific request is a page-by-page, line-by-line justification of the confidentiality of particular documents. Preparing these requests (including highlighting, redacting, writing specific justifications), is a labor-intensive and time-consuming task, as review of the requests must be for the Commission Staff. As the Rule reflects, it would be unreasonable and inappropriate to force GTE employees to spend at least days preparing—and for the Commission to consider and rule on—a specific request for confidential protection before even knowing which documents will be part of the evidentiary record.

GTE's interpretation of the confidentiality provisions is not in any way unusual or out of the ordinary. It is the same interpretation the Commission Staff itself employs. Indeed, there is no other interpretation, given the plain language that the 21-day clock for filing a specific request begins only when the confidential information is admitted into the evidentiary record of a hearing.

The cases OPC attaches to its Response are irrelevant to the question of when GTE must submit its specific request for permanent protective order under the Rules. These cases discuss the substantive merits of affording confidential treatment to particular types of information. We have not yet reached that point in this case. OPC's Motion raises a procedural question only, and that is a question the Commission must settle by reference to the relevant provisions of the Florida Administrative Code. Contrary to OPC's assertions, GTE is not making procedural efforts to "thwart" the "openness of the proceeding." It is, rather, doing exactly what it is supposed to do—following the confidentiality Rules set forth in the Florida Administrative Code. Those Rules must be applied consistently, regardless of the nature of the case or the identity of the party seeking to use confidential information.

In the spirit of compromise, GTE will carefully review the documents again to determine whether there are portions of documents for which there will be no need to seek a permanent protective order later (for instance, newspaper clippings that may be attached to confidential documents). GTE will inform OPC before the hearing whether there are any such portions that may be publicly disclosed. But, again, GTE is not required to file a specific request for permanent

protective order until after the hearing, and GTE asks the Commission to reject OPC's efforts to force GTE to do so.

Respectfully submitted on February 16, 2000.

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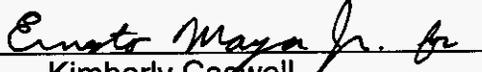
Attorney for GTE Florida Incorporated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Answer to Citizens' Response and Objection to GTE's Request for a Temporary Protective Order in Docket No. 991376-TL were sent via overnight delivery on February 15, 2000 to:

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