

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 100009-EI
ORDER NO. PSC-10-0482-PCO-EI
ISSUED: August 2, 2010

ORDER SETTING AN EVIDENTIARY HEARING ON CONFIDENTIALITY REQUESTS
AND ESTABLISHING HEARING PROCEDURE

Background

The Commission has scheduled its annual evidentiary hearing in the Nuclear Cost Recovery Clause (NCRC) docket for August 24-27, 2010. Order No. PSC-10-0115-PCO-EI, issued February 25, 2010, Order Establishing Procedure (OEP), sets forth the procedural requirements for all parties to this docket. There are currently 31 pending requests for confidential classification in this docket. Some of those requests involve pre-filed testimony or hearing exhibits, which may be discussed during the Nuclear Cost Recovery Clause Hearing, and it is therefore appropriate for the Prehearing Officer to make a determination regarding their confidentiality prior to the main hearing.

Previously, requests for confidentiality have been handled through affidavits of parties and staff recommendations to the Prehearing Officer. However, in light of the recent court decision in Florida Power & Light Company v. Florida Public Service Commission, 31 So. 3d 860 (Fla. 1st DCA 2010), evidentiary proceedings are necessary prior to denial of a request for confidential classification; and while no party or interested person has filed objections to any of the requests, some confidentiality requests may require additional testimony or explanation prior to a determination on confidentiality. Accordingly, an evidentiary proceeding has been set for August 20, 2010 at 9:30 a.m. before the Prehearing Officer to consider confidentiality requests for all testimony and hearing exhibits that are to be used during the main hearing. This Order Setting a Confidentiality Evidentiary Hearing establishes the procedures and timeframe for said hearing.

This order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code (F.A.C.), which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

DOCUMENT NUMBER-DATE
06292 AUG-2 0
FPSC-COMMISSION CLERK

Controlling Dates

(1)	Parties and Commission staff file list of pending confidentiality requests for documents anticipated for use during Nuclear Cost Recovery Hearing	August 6, 2010
(2)	Parties and Commission staff file list of witnesses who will appear at Confidentiality Evidentiary Hearing in support of or opposition to confidential treatment of documents	August 6, 2010
(3)	Parties and Commission staff file Issue list for Confidentiality Evidentiary Hearing	August 11, 2010
(4)	Prehearing Conference, confidentiality requests to be considered at Confidentiality Evidentiary Hearing identified by Prehearing Officer	August 11, 2010
(5)	Discovery cut-off for discovery related to Confidentiality Evidentiary Hearing	August 18, 2010
(6)	Confidentiality Evidentiary Hearing	August 20, 2010

Prehearing ProceduresA. Witness List

On or before August 6, 2010, parties and Commission staff shall file with the Commission Clerk, and serve on all parties and Commission staff, the list of witnesses expected to appear at the Confidentiality Evidentiary Hearing. Except for good cause shown, parties who may present witnesses at the Confidentiality Evidentiary Hearing shall be limited to those supporting the request for confidentiality, those who have timely objected to a confidentiality request, and Commission staff.

B. Prehearing Statements

No later than the commencement of the Prehearing Conference on August 11, 2010, all parties and staff shall file a Confidentiality Evidentiary Hearing Prehearing Statement which shall include a list of issues to be determined by the Prehearing Officer at the Confidentiality Evidentiary Hearing.

Discovery

Expedited discovery shall be permitted but shall be limited in scope to the issue of whether any particular document should be treated as confidential. Discovery shall be by deposition unless parties agree to some other form of discovery. Discovery shall be completed by August 18, 2010.

Testimony and Exhibits

All testimony shall be presented live. At the Confidentiality Evidentiary Hearing, the requesting party shall have available an unredacted copy of the confidential document for the Prehearing Officer's inspection.

Hearing Time and Place

The Confidentiality Evidentiary Hearing has been set for the following time and place:

Friday, August 20, 2010, 9:30 a.m.
Betty Easley Conference Center, Room 148
4075 Esplanade Way
Tallahassee, Florida 32399-0850

Hearing Procedures

A. Attendance at Hearing

Unless excused by the Prehearing Officer for good cause shown, each party (or designated representative) shall personally appear at the Confidentiality Evidentiary Hearing. Failure of a party or that party's representative to appear shall constitute waiver of that party's issues for the Confidentiality Evidentiary Hearing.

Likewise, all witnesses for the Confidentiality Evidentiary Hearing are required to be present at the hearing unless excused by the Prehearing Officer. The party sponsoring confidential exhibits is required to present all witnesses supporting its position at the Confidentiality Evidentiary Hearing. No affidavits will be admitted in lieu of live witness testimony from the affiant.

B. Witness Testimony

Each witness shall be sworn and present testimony and may also sponsor exhibits. If the witness is sponsored by a party requesting confidential classification, the witness shall also present an unredacted copy of the confidential document to the Prehearing Officer for inspection. Copies shall also be made available for parties in attendance, as set forth below.

C. Cross-Examination

Cross-examination of witnesses shall be limited to those parties requesting confidential treatment, any party who has timely objected to the confidential treatment of a document, and Commission staff. No other party than set forth above may cross-examine a witness unless good cause is shown why that party should be permitted to cross-examine a witness.

D. Discussion regarding confidential information

It is the policy of the Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes (F.S.), to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any discussion regarding information which is subject to a request for confidentiality shall be treated as follows:

(1) When confidential information is being discussed at the Confidentiality Evidentiary Hearing, parties must have copies for the Prehearing Officer, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents. Any party wishing to examine the information claimed confidential shall be provided a copy in the same fashion as provided to the Prehearing Officer, subject to execution of any appropriate protective agreement with the owner of the material.

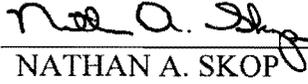
(2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality.

At the conclusion of that portion of the hearing that involves that specific confidentiality request, all copies of the confidential information being discussed shall be returned to the party requesting confidential treatment of that document, except that the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files and shall be retained as confidential until an order and any subsequent review has been finalized as provided by Rule 25-22.006, F.A.C.

Post-hearing Procedure

Upon completion of the Confidentiality Evidentiary Hearing, the Prehearing Officer shall issue an Order determining the confidentiality of the documents addressed at the evidentiary hearing.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 2nd day of August, 2010.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

LCB

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.