

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for proposed water and wastewater systems, in Hernando and Pasco Counties, and request for initial rates and charges, by Skyland Utilities, LLC.

DOCKET NO. 090478-WS
ORDER NO. PSC-10-0433-PCO-WS
ISSUED: July 6, 2010

ORDER DENYING HERNANDO COUNTY'S POST-HEARING PROCEDURAL REQUEST

As part of its Prehearing Statement, Hernando County (Hernando) requested that the Commission change its post-hearing procedures and require that the parties and our staff file Proposed Final Orders. Hernando states the Order Establishing Procedure (OEP) requires the parties to file post-hearing briefs but that the OEP is silent as to the process following the submittal of briefs. Hernando is concerned that after the briefs are filed, the Commission's staff files what Hernando labels as a "Proposed Final Order." Hernando argues that the staff's action violates Section 120.57(1), Florida Statutes. Hernando states that it should be permitted to file its Proposed Final Order directly to the Public Service Commission instead of allowing our staff to "Cherry-Pick" the record, as Hernando describes it.

Hernando misunderstands the procedures the Commission follows post-hearing and the role our staff takes in hearings. The parties' briefs are filed with the Clerk of the Commission. Briefs are part of the record. Just as we review the testimony and exhibits, we review the briefs. Our staff's function is advisory. They are not parties to this proceeding. After the record is closed, and the briefs filed, our staff provides us with their advice in the form of a written recommendation. In rendering our decision and issuing a final order, we take into consideration the hearing record, including the briefs, and our staff's recommendation. Our final order is then subject to review by the appellate courts.

There is ample statutory support for the Commission's procedures and methods of adjudication contained in Chapters 120 and 350, Florida Statutes. The Administrative Procedures Act clearly contemplates our agency's adjudication and resolution of administrative proceedings outside of Department of Administrative Hearings. Our procedures comport with both the requirements of statute and of due process. Therefore, Hernando County's request is denied.

Based on the foregoing, it is:

ORDERED that Hernando County's request to change the Commission's post-hearing procedures is denied.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 6th day of July, 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.