

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for clarification and guidance on appropriate market based pricing methodology for coal purchased from Gatliff Coal Company by Tampa Electric Company.) DOCKET NO. 920041-EI
) ORDER NO. PSC-92-0055-PCO-EI
) ISSUED: 3/12/92
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ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038(3), Florida Administrative Code, all parties are hereby required, either collectively or individually, to file with the Director of Records and Reporting a prehearing statement on or before May 12, 1992. Each prehearing statement shall set forth the following:

- (a) all known witnesses that may be called and the subject matter of their testimony;
- (b) all known exhibits, their contents, and whether they may be identified on a composite basis and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue;
- (f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;
- (g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;
- (h) a statement of issues that have been stipulated to by the parties;
- (i) a statement of all pending motions or other matters the party seeks action upon; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefor.

DOCUMENT NUMBER-DATE

02475 MAR 12 1992

FPSC-RECORDS/REPORTING

The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 12, 1992. In addition, pursuant to Rule 25-22.028, Florida Administrative Code, each party shall file a copy of its prehearing statement on diskette with the Division of Records and Reporting. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certificates.

Prefiled Testimony and Exhibits

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left margin to allow for binding. An original and fifteen copies of each witness's prefiled testimony and each exhibit must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Conference

A final prehearing conference will be held beginning at 9:30 a.m., May 28, 1992, in Room 106, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida. The conditions of Rule 25-22.038(5)(b), Florida Administrative Code, will be met in this case and the following shall apply:

- 1) Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.
- 2) Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order

shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

- 3) Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the Prehearing Conference. Each exhibit submitted will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness' name, the word "Exhibit" followed by a blank line for the Exhibit Number, and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 870675-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes Of Use by Time of Day

Confidentiality

- 1) It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Sections 364.183, 366.093, and 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.
- 2) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, [or 366.093, or 367.156], Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 3) Failure of any party to comply with 2) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 4) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 5) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- 6) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Controlling Dates

The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly procedure:

1. January 10, 1992 - Petitioner's Direct Testimony filed
2. April 7, 1992 - Intervenor's Direct Testimony to be filed
3. May 12, 1992 - Rebuttal Testimony to be filed
4. May 12, 1992 - Prehearing Statements to be filed
5. May 28, 1992 - Prehearing Conference
6. June 9, 1992 - Hearing to be held

DISCOVERY PROCEDURES

The hearing in this docket is presently set for June 9, 1992. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by June 2, 1992. No interrogatories nor requests for production of documents shall be served after April 28, 1992.


To facilitate identification, all interrogatories, requests for admissions, and requests for production of documents shall be numbered consecutively. Each set of discovery requests shall be numbered sequentially from any previous set. Unless authorized by the prehearing officer, the following limitations shall apply, which include all subparts:

Interrogatories	100
Requests for Production of Documents	100

ORDER NO. PSC-92-0055-PCO-EI
DOCKET NO. 920041-EI
PAGE 6

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.097(2), Florida Statutes.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 12th day of MARCH, 1992.


SUSAN F. CLARK, Commissioner
and Prehearing Officer

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