

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 130001-EI
In re: Energy conservation cost recovery clause.	DOCKET NO. 130002-EG
In re: Purchased gas adjustment (PGA) true-up.	DOCKET NO. 130003-GU
In re: Natural gas conservation cost recovery.	DOCKET NO. 130004-GU
In re: Environmental cost recovery clause.	DOCKET NO. 130007-EI
	ORDER NO. PSC-13-0165-PCO-PU ISSUED: April 22, 2013

ORDER FOR SERVICE OF ELECTRONIC DISCOVERY RESPONSES
AMENDING ORDERS ESTABLISHING PROCEDURE

The following Orders Establishing Procedure, Order No. PSC-13-0069-PCO-EI, issued February 4, 2013, Order No. PSC-13-0089-PCO-EG, issued February 18, 2013; Order No. PSC-13-0101-PCO-GU, issued February 22, 2013; Order No. PSC-13-0088-PCO-GU, issued February 18, 2013; and Order No. PSC-13-0070-PCO-EI, issued February 4, 2013, established hearing procedures and controlling dates in Docket Nos. 130001-EI, 130002-EG, Docket No. 130003-GU, 130004-GU and 130007-EI, respectively. These Orders were modified to change the date of the Prehearing Conference in the aforementioned clause dockets by Order No. PSC-13-0115-PCO-PU, issued March 7, 2013.

In Docket 130001-EI, Order No. PSC-13-0104-PCO-EI, issued February 27, 2013, amended paragraph 6 of Order No PSC-13-0069-PCO-EI to correct a scrivener's error regarding service of discovery responses. On March 21, 2013, the Office of Public Counsel (OPC) filed a motion for clarification and modification of Order No. PSC-13-0104-PCO-EI in all the aforementioned dockets. In its motion, OPC seeks clarification concerning the electronic filing of responses to interrogatories and requests for admissions, confidentiality provisions regarding filing of discovery responses, and service of responses to requests for production of documents.

OPC specifically seeks modification of Order No. PSC-13-0104-PCO-EI to provide that electronic service of discovery responses be limited to the notice of service, answers to interrogatories, and requests for admissions. As to requests for production of documents, OPC seeks that they be limited to the responsive pleadings without documents attached. OPC requests

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

that, consistent with the service of pleadings and documents that have been adopted by the Courts in Rule 2.516, Florida Rules of Judicial Administration, discovery responses served via e-mail be limited to 5 MB per attachment, indicate how many e-mails are being sent related to the discovery response (such as 1 of 6 e-mails), and be numbered sequentially. OPC further requests that large attachments and copies of documents produced in response to a request for production be served via disc(s). OPC forwarded a draft copy of its motion to the other parties in the aforementioned actions requesting comments or objections. No other party objected to the motion.

In Order No. PSC-13-0104-PCO-EI, discovery responses to be served via e-mail were already limited to interrogatories and requests for admission. However, the Order shall be modified to clarify the treatment of document requests and the parameters of electronic service. Accordingly, Order No. PSC-13-0104-PCO-EI shall be modified to provide that Section A, paragraphs 5 and 6 relating to discovery procedures read as follows:

- (5) Discovery responses to interrogatories and requests for admission shall be served by electronic mail. Discovery responses served via e-mail shall be limited to 5 MB per attachment, shall indicate how many e-mails are being sent related to the discovery response (such as 1 of 6 e-mails), and shall be numbered sequentially. Parties are encouraged to serve discovery responses to requests for production electronically when possible. Copies of documents produced in response to a request for production may be provided via disc(s), if not served electronically.
- (6) Discovery made prior to the filing of a utility's actual/estimated testimony and exhibits in this docket shall be made in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure, except as modified by this Order and any subsequent procedural orders issued in this docket. For discovery requests related to matters raised in a utility's actual/estimated testimony and exhibits, risk management plan for fuel procurement, hedging activity supplemental report, or projection testimony and exhibits, and intervenors' or staff's testimony and exhibits, the responding party shall serve its responses to the requesting party via electronic mail within 20 days of the date of the request. For discovery requests related to matters addressed in a utility's rebuttal testimony, the utility shall serve its responses to the requesting party within 10 days of the date of the request. All responses to discovery requests shall be served in the manner described in paragraph 5 above.

In its motion, OPC states that it is concerned that confidential information, produced in response to a discovery request may be served via e-mail without protection. Paragraph B of the OEP's section on discovery specifically addresses the procedures to request and obtain confidential treatment of proprietary confidential business information provided pursuant to discovery. The practice used by the parties is to routinely serve redacted copies and file unredacted copies of documents containing confidential information with the Commission Clerk along with a request for confidential treatment. Nothing in the OEP or the Amended OEP requires service of confidential information in a manner that would reveal confidential

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information. The parties have agreed to continue this practice of serving redacted discovery responses via e-mail and filing the unredacted copies with the Clerk via disc. Accordingly the first paragraph of Section V.B, in Order No PSC-13-0069-PCO-EI of Docket No. 130001-EI, confidential information provided pursuant to discovery, shall be amended to read as follows:

Any information provided to the Commission staff pursuant to a discovery request by the staff or any other person and for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. A redacted version of the confidential material subject to e-mail service shall be served electronically. A electronic version of the confidential material in the form of disc(s) shall be filed with the Commission Clerk via hand-delivery, U.S. Mail, or overnight mail on the day that the redacted version of the discovery response is served via e-mail.

(New language underlined. The remainder of the section is unchanged).

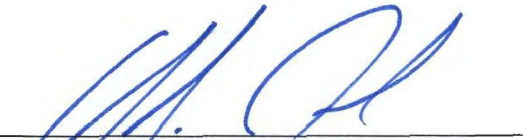
The corresponding paragraphs in Order No. PSC-13-0089-PCO-EG, issued February 18, 2013; Order No. PSC-13-0101-PCO-GU, issued February 22, 2013; Order No. PSC-13-0088-PCO-GU, issued February 18, 2013; and Order No. PSC-13-0070-PCO-EI, issued February 4, 2013, in Docket Nos. 130002-EG, 130003-GU, 130004-GU and 130007-EI, respectively, shall be amended to conform to this order.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer that Order Nos. PSC-13-0069-PCO-EI, PSC-13-0115-PCO-PU, PSC-13-0104-PCO-EI, PSC-13-0089-PCO-EG, PSC-13-0101-PCO-GU, PSC-13-0088-PCO-GU, and PSC-13-0070-PCO-EI, are amended to clarify procedures concerning service of discovery by electronic mail and service of confidential discovery materials as set forth in the body of this order. It is further

ORDERED that Order Nos. Order Nos. PSC-13-0069-PCO-EI, PSC-13-0115-PCO-PU, PSC-13-0104-PCO-EI, PSC-13-0089-PCO-EG, PSC-13-0101-PCO-GU, PSC-13-0088-PCO-GU, and PSC-13-0070-PCO-EI, are affirmed in all other respects.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 22nd day
of April, 2013.



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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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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.