

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 120.57(1) Draw-Out of Proposed)	DOCKET NO. 891324-EU
Revision of Rule 25-17.008, F.A.C.,)	
Conservation Cost Effectiveness)	ORDER NO. 23842
Reporting Format.)	
<hr/>		ISSUED: 12/7/90

ORDER ON PREHEARING PROCEDURE

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a prehearing statement on or before December 14, 1990. Each prehearing statement shall set forth the following for the issues related only to how lost revenues are to be considered in assessing cost effectiveness in proposed Rule 25-17.008, F.A.C.:

- (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 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

DOCUMENT NUMBER-DATE

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- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

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 December 14, 1990. Failure of a party to timely file a prehearing statement on the "lost revenues" matter shall be a waiver of any "lost revenues" 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 participants on the attached list. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications. (Some flexibility will be permitted for those participants not represented by counsel).

In addition to the filing with the Division of Records and Reporting, each party is encouraged, but not mandated, to file a copy of its Prehearing Statement with the Division of Appeals, Room 212, Fletcher Building, 101 East Gaines Street, Tallahassee, Florida 32399-0862, on computer diskette formatted to the specifications of Word Perfect Version 5.1.

Each party to the 120.57(1) proceeding is required to file the above summary statement of position on lost revenue issues. No prefiled testimony is required, but such testimony is discretionary. There is no requirement to prefile any additional information on the remaining section 120.54 issues (such as environmental externalities, level playing field for conservation and cogeneration).

It is noted that parties at agenda conference regarding the section 120.57 hearing acknowledged that delays in the scheduled rulemaking proceeding would not be necessary; that no discovery was necessary; and that participants without counsel would still have the opportunity to provide comments at the hearing.

The prehearing conference will be held at 9:30 a.m., on December 17, 1990, in Room 115, 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:

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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.

Any issue on "lost revenues" 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; 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.

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 shall have the following in the upper right-hand corner: the docket number,

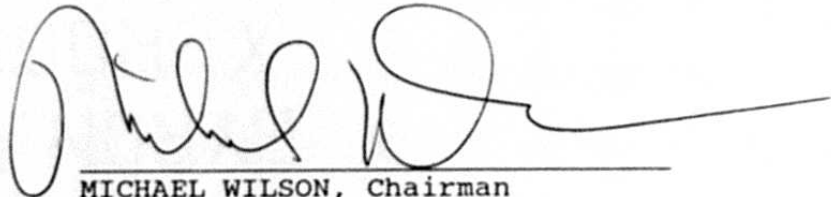
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the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number and the title of the exhibit.

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

By ORDER of Chairman Michael Wilson, as Prehearing Officer,
this 7th day of December, 1990.

A handwritten signature in black ink, appearing to read 'Michael Wilson', written over a horizontal line.

MICHAEL WILSON, Chairman
and Prehearing Officer

(S E A L)

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