Diamond Williams

From: Butler, John [John.Butler@fpl.com]

Sent: Monday, September 20, 2010 3:12 PM

To: Filings@psc.state.fl.us

Subject: Electronic Filing / Docket 090505-EI / FPL's Notice that its September 2, 2010 Verified M/Disqualify Commissioner Skop Applies to Docket 090505

Attachments: 9.20.10.FPL Notice that 9.2.10 Verified M.Disqualify Applies.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090505-EI

In Re: Review of replacement costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system

c. The document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 21 pages (2-page notice, plus 19 pages of appendix and certificate of service).

e. The document attached for electronic filing is Florida Power & Light Company's Notice that its September 2, 2010 Verified Motion to Disqualify Commissioner Skop Applies to Docket 090505-EI

John T. Butler
Managing Attorney
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system	)))	Docket No. 090505-EI Filed: September 20, 2010

FLORIDA POWER & LIGHT COMPANY'S NOTICE THAT ITS SEPTEMBER 2, 2010 VERIFIED MOTION TO DISQUALIFY COMMISSIONER SKOP APPLIES TO DOCKET 090505-EI

Florida Power & Light Company (FPL) hereby gives notice that FPL's September 2, 2010 Verified Motion to Disqualify Commissioner Skop attached hereto as Appendix A (the "Motion") applies to Docket 090505-EI.

1. FPL filed the Motion on September 2, 2010. The Motion asked Commissioner Skop to disqualify himself from "participating as a member of the Public Service Commission (PSC or Commission) in PSC hearings, deliberations, decision-making, or acting in any other capacity, on *all active dockets and matters involving FPL that have not yet been decided by the Commission including, but not limited to, the above-referenced dockets,* as well as any future dockets involving FPL that are opening in calendar year 2010." Motion, at page 2 (emphasis added). Docket No. 090505-EI, among others, was an active docket before this Commission at the time the Motion was filed and hence is clearly covered by the Motion.

2. On September 16, 2010, the Commission issued Order No. PSC-10-0573-PCO-EI ("Order 0573"), in which Commissioner Skop responded to the Motion by declining to recuse himself. The caption to Order 0573 identifies the dockets that are listed by number in the Motion's caption, but not Docket No. 090505-EI. Moreover, Order 0573 appears on the Commission's website for the dockets identified in the caption but not for Docket No. 090505-EI. FPL is not aware of any order issued by the Commission that addresses the Motion with

respect to Docket No. 090505-EI.

3. FPL is providing this notice to the Commission and the parties in Docket No. 090505-EI to make clear that, as stated on the face of the Motion, it applies to *all* active dockets and matters involving FPL, including Docket No. 090505-EI; that FPL objects to Commissioner Skop's further participation in this docket for the same reasons set forth in the Motion with respect to the specifically enumerated dockets; and that Order 0573 should be entered in this docket as well.

Respectfully submitted,

R. Wade Litchfield, Vice President
and General Counsel
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By: */s/ John T. Butler*
John T. Butler
Florida Bar No. 283479

CERTIFICATE OF SERVICE
Docket No. 090505-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 20th day of September, 2010, to the following:

Lisa Bennett, Esq. Division of Legal Services Florida Public Service Commission 2540 Shumard Oak Blvd Tallahassee, Florida 32399-0850 LBENNETT@PSC.STATE.FL.US	J. R. Kelly, Esq. Charles J. Rehwinkel, Esq Charles Beck, Esq. Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, Florida 32399 Kelly.jr@leg.state.fl.us rehwinkel.charles@leg.state.fl.us beck.charles@leg.state.fl.us
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By: *s/ John T. Butler*
John T. Butler
Fla. Bar No. 283479

APPENDIX "A"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 100001-EI
In re: Energy conservation cost recovery clause.	DOCKET NO. 100002-EG
In re: Environmental cost recovery clause.	DOCKET NO. 100007-EI
In re: Nuclear cost recovery clause.	DOCKET NO. 100009-EI
In re: Petition for increase in rates by Florida Power & Light Company.	DOCKET NO. 080677-EI
In re: 2009 depreciation and dismantlement study by Florida Power & Light Company.	DOCKET NO. 090130-EI
In re: Investigation of the appropriateness of the affiliate product offerings to Florida Power & Light customers.	DOCKET NO. 100077-EI
In re: Petition for approval of demand-side management plan of Florida Power & Light Company.	DOCKET NO. 100155-EG
In re: Petition to determine need for West County Energy Center Unit 3 electrical power plant, by Florida Power & Light Company.	DOCKET NO. 080203-EI
In re: Petition for determination of need for conversion of Riviera Plant in Palm Beach County, by Florida Power & Light Company.	DOCKET NO. 080245-EI
In re: Petition for determination of need for conversion of Cape Canaveral Plant in Brevard County, by Florida Power & Light Company.	DOCKET NO. 080246-EI
In re: Application for authority to issue and sell securities during calendar year 2010 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company.	DOCKET NO. 090494-EI

In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.	DOCKET NO. 060038-EI ORDER NO. PSC-10-0573-PCO-EI ISSUED: September 16, 2010

ORDER DECLINING RECUSAL OF COMMISSIONER NATHAN A. SKOP

On September 2, 2010, Florida Power & Light Company (FPL) filed a Verified Motion to Disqualify Commissioner Skop (Motion) in all active dockets and matters involving FPL as well as any future dockets involving FPL that are opened in calendar year 2010.

As noted in Charlotte County, Florida v. IMC Phosphates Company, et al., 824 So. 2d 298 (Fla. 1st DCA 2002), as to disqualification matters,

> [t]he question presented is whether the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing. . . . It is not a question of how the judge actually feels, but what feeling resides in the movant's mind and the basis for such feeling . . . . The judge may not pass on the truth of allegations of fact, and countervailing evidence is not admissible.

824 So. 2d at 300.

In support of the Motion, FPL begins with allegations concerning my former employment with FPL in 2002, and then quotes from statements I am said to have made on June 30 and July 1, 2010 concerning the Commission Nominating Council's failure to interview me for reappointment to the Commission for a second term. FPL characterizes these statements as proceeding to blame FPL for my not being interviewed by the Nominating Council. Motion, p. 2-3.[1]

[1] FPL also notes on p. 4 of the Motion that I made a statement during the hearing on August 26, 2010 referencing that issue.

As presented in the Motion, FPL does not represent that there was bias against FPL on my part in any of the innumerable FPL dockets I participated in prior to 2010. Instead, it is claimed on pp. 4-5 of the Motion that, subsequent to FPL's rate case, and starting in early 2010, I exhibited increasing hostility and antagonism toward FPL which culminated in adversarial conduct during hearings post-dating the public statements I am said to have made as described on p. 3 of the Motion. Those statements contained, inter alia, the following:

> It shows the extent to which the Legislature is influenced by the companies that we regulate.
>
> . . .
>
> . . . the nominating panel's decision "absolutely" was payback for the five-member commission's unanimous votes earlier this year to reject most of the rate increases sought by Florida Power & Light Co. and Progress Energy Florida.

Motion, p. 3.

Since FPL interprets these statements as seeking to blame FPL for my not being interviewed by the Nominating Council, that interpretation is the premise, along with my participation in the FPL rate case, for what FPL claims to have been my antagonistic conduct in the two scheduled meetings complained about in the Motion. That interpretation or inference is also central to FPL's claim of bias on my part in the Motion generally.

In testing the legal sufficiency of the Motion, which is my task, I note initially that the Motion did not include any mention of a statute authorizing the filing of the Motion. Therefore, it is necessary at the threshold to determine whether the filing meets the requirements of the authorizing statute.

Section 120.665(1), Florida Statutes (2010), states as follows:

> Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency

> proceeding for bias, prejudice or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. [e.s.]

In this instance, it could not be more clear that FPL's September 2, 2010 Motion was filed in violation of the requirements of Section 120.665 because it was filed after the agency proceeding in Docket 100009-EI began on August 24, 2010, rather than prior to it.[2]

As Prehearing Officer in Docket No. 100009-EI, I issued Order No. PSC-10-0482-PCO-EI on August 2, 2010, setting an Evidentiary Hearing on Confidentiality Requests and Establishing the Hearing Procedure. Attachment A. The order stated that the Nuclear Cost Recovery Clause hearing would begin on August 24, 2010.

Therefore, had FPL timely filed its Motion on or prior to August 19, 2010, it would have been considered on August 24, 2010. It also would have met the requirement of Section 120.665 that it be filed "within a reasonable period of time prior to the agency proceeding." Instead, the Motion was filed untimely on September 2, 2010, and, accordingly, must be denied for that reason.[3]

I would further point out that the timeliness requirement of the statute is not merely technical. The duties of a PSC Commissioner are not limited to judging, but also include investigation.[4] Therefore, it is certainly possible that a given line of inquiry might make a party

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[2] This discussion of the timeliness requirement would also apply to the following dockets listed by movant: Docket Nos. 080203-EI; 080245-EI; 080246-EI; 090494-EI; 060038-EI. Final orders already have been issued in those dockets.

[3] I note that the hearing was recessed for the Labor Day holiday at the close of the August 27, 2010, session and re-commenced on September 7, 2010. Thus, the September 7, 2010 session was not a "new" hearing, but merely the continuation of the same hearing which began on August 24, 2010.

[4] As stated in Bay Bank & Trust Company v. Lewis, 634 So. 2d 672, 679 (Fla. 1st DCA 1994), the agency head necessarily serves as "investigator . . . and adjudicator . . ."

uncomfortable. For example, the issuance of subpoenas may be contemplated in pursuit of obtaining satisfactory responses from a party to certain questions.

Section 120.665 is designed to ensure that a party may disqualify an agency head for bias, prejudice, or interest when good grounds for disqualification exist. While that is important, the timeliness requirement reflects the equally important legislative intent that the statute not be misused to relieve a party's discomfort when the going gets tough during an agency proceeding through an attempt to oust a Commissioner that pursues, for example, an unexpectedly irksome line of questions. Such an untethered, free-roaming threat of recusal would seriously impair the ability of the Commission to carry out its important responsibilities in an effective manner by chilling the asking of hard questions.[5]

I turn now to FPL's argument in the Motion, the centerpiece of which is the inference that my statements on June 30 and July 1, 2010 blamed FPL for my not being interviewed by the Nominating Council for reappointment. However, the first sentence excerpted above from those statements refers not to any one company only, such as FPL, but to the influence on the Legislature of "companies that we regulate." Even more specifically, the second sentence makes clear that I voted against the rate increases sought, not only in FPL's rate case, but in Progress Energy Florida's [PEF] rate case as well.

One would think, therefore, that if FPL mentioned PEF at all, it would be to buttress its case by asserting that PEF also interpreted my statements as seeking to blame PEF for my not being interviewed by the nominating council. One would further expect assertions that, ever

[5] As Judge Padovano noted in Florida Appellate Practice, 2010 Ed. at §§29:3, ". . . a petition for writ of prohibition must be filed before the improper exercise of judicial power has caused harm to the petitioner. The remedy is not available after the fact to undo the harm." [e.s.] This is consistent with the requirement in Section 120.665, Florida Statutes, that disqualification of an agency head, if sought, must be suggested prior to an agency proceeding; i.e., as a preventive, rather than corrective measure.

since PEF's rate case, and starting early in 2010, I exhibited increasing hostility and antagonism toward PEF which culminated in adversarial conduct during hearings post-dating the aforementioned statements.

One would think that, but one would be wrong. On p. 6 of the Motion, FPL states, in fact, the exact opposite:

> A review of the full transcripts of recent hearings illustrates that Commissioner Skop has reserved his antagonistic behavior for FPL and displayed no similar behavior with respect to the other utility [i.e., PEF] that was before the Commission on its nuclear cost recovery request in the same hearings. [e.s.]

This statement by FPL is a striking anomaly which renders its factual scenario internally inconsistent, self-contradictory and incoherent. In the absence of any explanation, FPL's conflicting assertions simply make no sense. The cited statements of mine make it clear that all of the circumstances relied on by FPL to establish bias on my part toward FPL also apply to PEF. I voted against PEF's rate increase requests as well as FPL's, and noted in the July 1, 2010 statement that the Nominating Council's "payback" reflected my participation in PEF's rate case as well as FPL's rate case.

Further, I lamented the influence on the Legislature of "the companies that we regulate," which would include PEF, as well as FPL. Yet, FPL, after "[a] review of the full transcripts of recent hearings," is unable to detect the slightest signs of bias, prejudice, or antagonism on my part towards PEF. Apparently, PEF, having filed no motion similar to FPL's, does not interpret the exact same public statements of mine as seeking to blame PEF for my failure to be interviewed by the Nominating Council.

While I cannot, pursuant to Charlotte County, supra, refute FPL's contentions, including its interpretation of my public statements, I also cannot refute FPL's inconsistent assertions about

PEF. Although I cannot refute any of FPL's contentions, I know of nothing that prohibits FPL from refuting its own claims, which it appears to have done in this instance by rendering its factual assertions incomprehensible.

In Optiplan, Inc. v. School Board, 710 So. 2d 569 (Fla. 4th DCA 1998), the movant tried to disqualify the entire Board on the grounds that two of its members testified before the agency head. The Court stated that

> [a]ll that Optiplan's motion suggests is that these members might have talked to other School Board members and might have influenced them. This falls far short of the facts necessary to disqualify the individual members, let alone the entire School Board.

710 So. 2d at 572.

FPL's allegations in this case that exactly the same circumstances induced bias and antagonism on my part toward one company and neither one toward another company appear to reflect at least the same uncertainty as the facts alleged in Optiplan.

As noted in Bay Bank, supra, a movant seeking to disqualify an agency head must

> . . .allege specific facts relied on to objectively establish a sufficient ground for fear of . . . bias and prejudice. [e.s.]

634 So. 2d at 678.

The Court held that the contention of the bank's principals that they were subject to hostile regulatory actions after they withheld political support from Comptroller Lewis failed to meet that test:

> Petitioners have failed to show any connection between their cessation of campaign support and the Department's commencement of regulatory proceedings against them other than a temporal circumstance which, without

> more, is simply too tenuous and speculative to require disqualification of the agency head.[6]

634 So. 2d at 679.

In this case, FPL's inconsistent and self-contradictory allegations concerning my conduct post-rate cases and post-nominating council actions seem at least as tenuous and speculative as those rejected in Bay Bank, supra. Accordingly, I find those allegations to be insufficient to provide an objective ground for fear of bias and prejudice requiring disqualification of an agency head. Optiplan, supra; Bay Bank, supra.

Having examined FPL's factual allegations, it remains to consider the case law provided by FPL in support of its Motion. Those cases fall into two groups. The first is "public statement" cases, claimed by FPL to support recusal based on my public statements about legislative politics cited earlier and on p. 3 of the Motion. The second is "advocacy" cases claimed by FPL to support recusal based on what FPL believes to be wrongful advocacy on my part during the hearings described on pp. 4-6 of the Motion. However, for the reasons stated below, these cases do not appear to be on point.

The "public statement" cases relied on by FPL are all similar in that they involve a public statement by a judge, agency head, or other decision-maker that indicates that the agency head, for example, has pre-judged the merits of an ongoing case that is the subject of the public statement. Thus, in Charlotte County, supra, a mining company applied for a permit from DEP. On the same day that an ALJ entered an order recommending that the permit be issued, the Secretary of DEP stated:

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[6] The Court also noted that the standards for disqualifying an agency head differ from the standards for disqualifying a judge. Id.

> We have felt all along that our actions were fully consistent with state law and Department rules.

824 So. 2d at 300.

> Charlotte County moved for the Secretary's disqualification,
>
> arguing that it reasonably believed that it could not receive a fair and impartial hearing from the agency head on its exceptions to the recommended order.

Id.

It is difficult to see how this, or FPL's other cited cases, relate to this case, where my statements concerned no docketed case or issue pending before the Commission. Compare, World Transportation, Inc. v. Central Florida Regional Transportation, 641 So. 2d 913 (Fla. 5th DCA 1994) (hearing officer made statements which objectively demonstrated bias and prejudice); Williams v. Balch, 897 So. 2d 498 (Fla. 4th DCA 2005) (court made comments signaling a predisposition against the wife's position before considering her evidence); Novartus Pharmaceuticals Corp. v. Carnato, 840 So. 2d 410 (Fla. 4th DCA 2003) (judge made adverse comments to reporter about confidential documents produced in camera by defendant); Coleman v. State, 866 So. 2d 209 (Fla. 4th DCA 2004) (judge showed reporter draft order of impending decision). Indeed, a more relevant case than those cited by FPL supports denying the Motion. See, City of Palatka v. Frederick, 128 Fla. 366, 369 (Fla. 1937). (statement by judge that, "I do not know the people of Palatka very well . . . and I know they will not like this decision, but I don't give a damn," not a basis for recusal).

The "advocacy" cases relied on by FPL are also all similar in that they involve advocacy by a judge or other decision-maker that would tilt the decision on the merits in a case towards or

away from a party. Thus, in Cammarata v. Jones, 763 So. 2d 552 (Fla. 4th DCA 2000), the judge denied respondent's motion for leave to amend complaint, but then suggested to her counsel:

> Why don't we talk about the possibility of conforming – of a motion to, or entertaining a motion to conform the pleadings to the evidence and see if you can do it that way, because it's too late now to add an indispensible party and amend your pleadings a month before trial.
>
> . . .
>
> Well, the second thing you can do, you can take a voluntary dismissal and refile because it's always dismissed without prejudice. The third thing is you can move to conform the pleadings with regard to a piercing of the corporate veil situation.
>
> The petitioner's counsel objected to the suggestions on the ground that it was improper for the judge to offer advice to opposing counsel.

763 So. 2d at 552.

Again, it is difficult to see how this, or FPL's other cited cases, relate to the facts of this case. Here, both of the hearings in which FPL complains that my "advocacy" crossed the line concerned debates among the Commissioners about procedure; i.e., should a hearing be held or not, or, if testimony is to be heard, should it be part of the ongoing proceedings or deferred for a year or more. Thus, with respect to Cammarata and the other similar cases relied upon by FPL, if the issue under discussion is whether witness testimony should be heard and when, a Commissioner cannot be failing to remain a neutral arbiter because the witnesses have not yet testified. Indeed, implicit in arguing that witness testimony should be part of the ongoing proceedings is the recognition that the merits have yet to be considered, or resolved favorably or unfavorably as to any party:

> Commissioner Skop: Thank you. Madam Chair, Commissioners, I am adamantly opposed to and vigorously object to considering the proposed stipulation prior to hearing all of the FPL witness testimony in this docket.[7] [e.s.]

Tr. 1237 (August 26, 2010).

Compare, Barrett v. Barrett, 851 So. 2d 799 (Fla. 4th DCA 2003) (trial court's examination of witness in child custody proceeding went beyond that of a neutral arbiter seeking information, and into the impermissible role of an advocate); Sparks v. State, 740 So. 2d 33 (Fla. 1st DCA 1999), rev. denied, 741 So. 2d 1137 (Fla. 1999)(judge pointed out evidence to prosecutor which was used in impeachment and relied on in closing argument). Indeed, a more relevant case than those cited by FPL supports denying the Motion. See, City of Palatka v. Frederick, supra (judge's manner during questioning of party perceived as hostile by party insufficient ground for recusal).

Conclusion

Based on the foregoing, I have been unable to discern a legally sufficient ground for recusal in Florida Power & Light Company's late-filed Motion based on either the inconsistent facts alleged by FPL or the inapposite legal authorities provided in support thereof. Accordingly, I must respectfully decline so to do.

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[7] It should be noted that the Sunshine Laws require the Commission to debate in public its procedural "next step" decisions as well as the merits issues of the parties that appear before it. Both of the hearings at issue in FPL's Motion were devoted to vigorous and protracted debate about the Commission's procedural "next step" decision. Thus, my "advocacy," however heated, was aimed at persuading other Commissioners about which procedural "next step" to take, rather than about the decision of any merits issue for or against a party.

By ORDER of Commissioner Nathan A. Skop, this 16th day of September, 2010.

NATHAN A. SKOP
Commissioner

(SEAL)

RCB

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.

Any party adversely affected by this order, which is non-final 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. Citizens of the State of Florida v. Mayo, 316 So.2d 262 (Fla. 1975), states that an order on interim rates is not final or reviewable until a final order is issued. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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.

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 Procedures

A. 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.