

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

NOTICE OF STAFF WORKSHOP

TO

ALL FPSC PRACTITIONERS

AND

ALL OTHER INTERESTED PERSONS

UNDOCKETED

FPSC HEARING PROCESS AND PROCEDURES

ISSUED: October 2, 2015

NOTICE is hereby given that the staff of the Florida Public Service Commission will conduct a workshop at the following time and place:

Tuesday, October 27, 2015, 10:00 a.m.
Gunter Building, Room 105
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

PURPOSE AND PROCEDURE

The purpose of this workshop is for Commission staff to address the comments made by Commission practitioners at the July 17, 2015, workshop concerning the process and procedures for FPSC evidentiary proceedings. A copy of the agenda for this workshop is attached.

Interested persons may participate telephonically by dialing 1-888-670-3525, Passcode 3498283979 then #.

If you have any questions about the workshop, please contact Mary Anne Helton at (850) 413-6096 or mhelton@psc.state.fl.us.

If you wish to comment but cannot participate, please forward your comments to Mary Anne Helton, Office of the General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, on or before October 23, 2015, specifically referencing the title of the workshop.

NOTICE OF STAFF WORKSHOP
UNDOCKETED
PAGE 2

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate at this workshop should contact the Office of Commission Clerk no later than five days prior to the workshop at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, via 1-800-955-8770 (Voice) or 1-800-955-8771 (TDD), Florida Relay Service.

One or more of the Commissioners of the Florida Public Service Commission may attend and participate in the workshop.

JURISDICTION

Jurisdiction is vested in this Commission pursuant to Chapters 120 and 350, Florida Statutes. The workshop will be governed by the provisions of that Chapter and Chapters, 25-22 and 28-102, and 28-106, Florida Administrative Code.

VISUAL AIDS

Workshop participants who plan to use visual aids during the course of their presentation, such as PowerPoint, must provide an electronic copy and 21 hard copies of the presentation, at least three work days prior to the workshop, to Mary Anne Helton, who may be contacted using the information above.

EMERGENCY CANCELLATION OF WORKSHOP

If a named storm or other disaster requires cancellation of the workshop, Commission staff will attempt to give timely direct notice to the parties. Notice of cancellation of the workshop will also be provided on the Commission's website (<http://www.psc.state.fl.us/>) under the Hot Topics link found on the home page. Cancellation can also be confirmed by calling the Office of the General Counsel at 850-413-6199.

NOTICE OF STAFF WORKSHOP
UNDOCKETED
PAGE 3

By DIRECTION of the Florida Public Service Commission this 2nd day of October,
2015.



CARLOTTA S. STAUFFER
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

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 STAFF WORKSHOP
UNDOCKETED
PAGE 4

A G E N D A

FLORIDA PUBLIC SERVICE COMMISSION WORKSHOP

UNDOCKETED

FPSC HEARING PROCESS AND PROCEDURES

**10:00 a.m., October 27, 2015, Tuesday
Gunter Building, Room 105
2540 Shumard Oak Boulevard
Tallahassee, Florida**

Opening Remarks by FPSC Staff

Discussion of attached 8/4/15 Workshop Notes and Staff's Response

Other comments

Adjourn

**CONSISTENT WITH COMMISSION POLICY,
THIS MEETING IS OPEN TO THE PUBLIC**

8/4/15 Workshop Notes and Staff's Response

Staff's response is highlighted.

Overarching Themes

***Notice and opportunity to be heard. No surprises during hearing.

***Role of staff

From the Statement of Agency Organization and Operation: “The Commission staff may participate as a party in any proceeding. Staff’s primary duties are to represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for consideration.”

Use of depositions during hearings

- Recent change to OEP—must give notice if plan to use depositions for reasons other than impeachment.
- Intervenors expressed concerns about the timing of depositions, and the role of Rule 1.330, F.R.C.P. (whether the deponent becomes the witness of the party introducing the deposition, ability to rebut what is in the deposition)(no artificial shrinking of discovery to meet targets).
- Consensus that disputes concerning the use and timing of depositions be addressed *ad hoc*.

To ensure that everyone has the opportunity to develop their case and conduct discovery, staff suggests that depositions on pre-filed direct testimony be scheduled earlier in the process, after the direct testimony is filed. There may be need for narrow, follow-up depositions on pre-filed rebuttal testimony.

Staff's Stipulated Exhibits

- The intervenors expressed concerns about the use of the stipulated exhibit list—tension between expediency and relevance; clarification and expansion.
- Suggestion was made that staff should explain the relevance of exhibits identified on the list and identify the testimony to which the question relates. Discovery that clarifies facts is ok. Open-ended questions that provide a forum for the answer to bolster a party's case is not ok. Problem is how to rebut, vet potentially new information. Should parties be able to comment on the “supplemental discovery” during witness summaries?

- Suggestion made that if staff plans to use discovery documents during cross, staff should ask questions first.
- Suggestion made that staff submit its exhibit list sooner than is the current practice.

Staff lawyers will conduct training on relevance. Staff will provide the relevant issue number for each document on the comprehensive exhibit list and provide the list as soon as possible after the prehearing conference. Staff would appreciate a heads up from the parties if they see a response to discovery that would be problematic if entered into the record.

Discovery Objections

- Request to eliminate discovery objections filing requirement prior to discovery deadline.

Staff will recommend that the discovery objections filing requirement be stricken from the order establishing procedure.

Discovery in Electronic Format

- Request that for Excel files, there be no requirement to convert the file to PDF for bate stamping purposes; instead bate stamp the CD or first page of the electronic document. Such files should be provided in native format only.

Staff believes that issues with large excel spreadsheets or other electronic files should be treated on a case-by-case basis, and requests that parties raise any concerns with the staff counsel assigned to the docket.

Issue Identification

- Suggestion for order establishing procedure to set two issue IDs—before and after intervenor pre-filed testimony. Minimum of 7 days notice for Issue ID meetings.
- Suggestion that parties should be able to raise issues they deem necessary to be adjudicated. Staff's role should be to eliminate duplication and ensure neutral wording, they should not be advocates for particular issues. Burden should be on party seeking to exclude issues, not on including issues.
- Problem of addressing issues where no prefiled testimony addresses the subject. Situation develops because issues may arise during discovery.
- Problem of staff raising issues not tied to the testimony in a hearing. Example was rate cases where staff is operating off a generic list of issues.
- Suggestion to tweak notices for issue identification to also provide for discussion about the scheduling of depositions.

Staff believes there should be at least one issue identification conference scheduled for each hearing track case, and the date should be set in the order establishing procedure. Additional issue identification meetings should be set on a case-by-case basis, with a minimum 7-day notice, unless a shorter time period is agreed to by the parties.

Under South Florida Natural Gas Co. v. Public Service Com., 534 So. 2d 695 (Fla. 1988), staff believes it may raise disputed issues of fact not raised by the parties. See also: Order No. PSC-15-0354-PCO-EI, issued Sept. 3, 2015, in Docket No. 150001-EI: “Commission staff has traditionally held informal meetings to develop issue lists. Commission staff does not have the authority to rule on which issue is included or excluded from the final issue list; that prerogative is clearly that of the Prehearing Officer or Commission panel assigned to the docket. ... It is Commission staff’s role, however, to identify the issues parties wish to raise and the issues that all parties, as well as staff, agree should be litigated.”

Staff believes that the parties should be in constant communication about scheduling depositions or other means of processing cases efficiently and expeditiously. Staff will add language to the end of meeting notices to ensure that parties know they can talk about ways to facilitate a proceeding when gathered together for issue identification.

Confidentiality

- Request to clarify prehearing order that Commissioners and staff will have copies of confidential prefiled testimony and prefiled exhibits during hearings.
- All parties appreciate the notice of intent process.

Commission staff will ensure the Commissioners and staff will have highlighted copies of prefiled testimony and exhibits available at hearing. Parties will be responsible for bringing their own copies of confidential prefiled testimony and exhibits to the hearing.

Expert Witnesses

- Should area of expertise for expert witnesses be identified in advance?

Staff will recommend adding a requirement to the order establishing procedure that the prefiled testimony of each witness identify the areas of expertise for each witness’ testimony.

5:00 p.m. Deadline for filings

- Discussion about whether to allow filings by midnight on the due date.

Rule 28-106.104(3), F.A.C., requires filings be made by 5:00 p.m. on the date due.

Late-filed Exhibits

- General consensus that late-filed exhibits should not be part of the regular process.
- If late filed exhibits are allowed, they should be admitted subject to the objection of a party. An affidavit should be attached.

Staff believes the use of late-filed exhibits should be rare, if used at all.

Conditional Waivers

- Should utilities be able to “conditionally waive” statutory timeframes. Practice enables insufficient filings.

Staff plans to continue to ask parties for waivers of statutory time frames.

Telephonic Participation

- Question was raised whether we should allow more telephonic participation.
- Request to make move staff list available earlier, and to allow participants for move staff items to appear telephonically.

If a party wishes to participate telephonically in any proceeding, the party should direct the request to the Chairman’s office (and may do so through staff counsel). In staff’s experience, there are problems with telephonic participation, such as the technology does not always work, it may be hard to hear and decipher what is being said, and it is inefficient when paper is distributed at the meeting, hearing, etc.