

§577.9

party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under §577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

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(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such

tribe may intervene as a matter of right.

(c) A person not named as a party and who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a party at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner wishes to present witnesses.

(d) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(e) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(f) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and may then treat the petition as a request for participation as *amicus curiae* (that is, "friend of the court").

§ 577.13 Transcript of hearing.

Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

§ 577.14 Recommended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the record closes, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record.

(b) *Filing of objections.* Within ten (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§ 577.15 Review by Commission.

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed except that, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved.

PARTS 578–579 [RESERVED]

SUBCHAPTER H [RESERVED]

PARTS 580–589 [RESERVED]