

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Rules 25-22.0021, ) DOCKET NO. 920840-OT  
25-22.056, 25-22.057 and )  
25-22.058, F.A.C. ) ORDER NO. PSC-93-0337-FOF-OT  
 )  
 )  
 ) ISSUED: 03/04/93

NOTICE OF ADOPTION OF RULE

NOTICE is hereby given that the Commission, pursuant to section 120.54, Florida Statutes, has adopted Rules 25-22.0021 and 25-22.056, F.A.C., relating to post-hearing filings, and agenda participation, with changes. Rule 25-22.058, F.A.C., relating to oral argument, has been adopted without change. Rule 25-22.057, F.A.C., has been repealed.

The rules were filed with the Department of State on March 3, 1993 and will be effective on March 23, 1993. A copy of the relevant portions of the certification filed with the Secretary of State is attached to this Notice.

This docket is closed upon issuance of this notice.

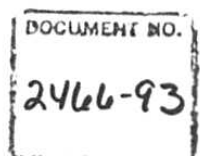
By ORDER of the Florida Public Service Commission this 4th day of March, 1993.

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STEVE TRIBBLE, Director  
Division of Records & Reporting

( S E A L )

by: Kay Wilson  
Chief, Bureau of Records

adp22.mrd



25-22.056 Post-Hearing Filings.

(1) General Provisions.

(a) If a hearing under section 120.57, F.S., is conducted by a panel of two or more Commissioners or the full Commission, all parties may submit proposed findings of fact, conclusions of law, and recommended orders, and or legal briefs on the issues within a time designated by the presiding officer.

(b) If a hearing under section 120.57, F.S., is conducted by a Commissioner sitting as a hearing officer, all parties and staff may submit proposed findings of fact, conclusions of law, proposed recommended orders which shall include a statement of the issues, and exceptions to the proposed or recommended order, within the time and in the format designated by the hearing officer.

(c) A party who fails to state or reaffirm a position on an issue to the presiding officer or hearing officer at the appropriate time shall be deemed to have waived that issue or position.

(d) A party's proposed findings of fact, conclusions of law, statement of issues and positions, and brief shall together total no more than 60 pages and shall be filed at the same time. The hearing officer or, if the hearing has been conducted by a panel or the full Commission, the prehearing officer, may modify the page limit for good cause shown. Lettering shall be distinct and printed in type of no more than 10 characters per inch. The text

must be double spaced with 1-inch margins except for quoted material which may be indented and single spaced.

(e) Requests for oral argument shall be filed in accordance with Rule 25-22.058, F.A.C.

(2) Proposed Findings of Fact. A party may submit proposed findings of fact, ~~and~~ the hearing presiding officer or Commissioners assigned to the proceeding will rule upon each finding of fact one, as required by section § 120.59(2), F.S., when filed in conformance with this rule.

(a) Proposed findings of fact shall be entitled as such, and must be presented on a document separate from all other post-hearing documents memoranda.

(b) Each proposed finding of fact shall be separately stated, numbered consecutively, and shall be a succinct statement may not to exceed 3 sentences in length. be contained in extensive narrative form, or Proposed findings of fact shall not contain mixed questions of fact and law. Each proposed finding of fact shall cite to the record, identifying the page and line of the transcript or exhibit that supports the particular finding. All proposed findings of fact which relate to a particular issue shall be grouped together and shall identify the issue number to which they relate. Any written statement that is not clearly designated as a proposed finding of fact shall be considered to be legal argument rather than proposed finding of fact.

(3) Statement of issues and positions. In any proceeding where a prehearing order has been issued, and such prehearing order contains a statement of the issues as well as the positions of the parties thereon, all post-hearing statements and other documents filed pursuant to this rule memoranda shall conform to the form and content of the statement of the issues and positions.

(a) Each party to a proceeding shall file a post-hearing statement of issues and positions which shall include a summary of each position of no more than 50 words, set off with asterisks. If a party's position has not changed since the issuance of the prehearing order, the party's post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words it must be reduced to no more than 50 words. The 50-word limit may be modified for good cause shown. In the event that a new issue is identified by a party in a post-hearing statement, that new issue shall be clearly identified as such, and a statement of position thereon shall be included. Any issue or position not included in a post-hearing statement shall be considered waived.

(b) A party is not required to file a post-hearing documents memorandum in addition to the post-hearing statement, unless otherwise required by the presiding officer. If a brief is filed, each argument must be identified by the issue number to which it relates. In the event that a party fails to file a post-hearing

statement in conformance with (3)(a), and no other post-hearing memorandum is filed which conforms to this rule, that a party ~~so~~ ~~failing~~ shall have waived all issues and may be dismissed from the proceeding.

(4) Post-Hearing Filings When Hearing is Conducted by a Hearing Officer. If a hearing under section 120.57, F.S., is held before a Commissioner sitting as a hearing officer, the following provisions shall apply in addition to (1)(b) through (3) of this rule. Subsection (b) of the following provisions also applies when the hearing has been conducted by the Division of Administrative Hearings.

(a) Recommended or Proposed Order. The hearing officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended or proposed order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law separately stated, and recommendation for final Commission action.

(b) Exceptions. Parties and staff may file exceptions to the recommended or proposed order with the Division of Records and Reporting within 14 days of service of the order, and shall serve copies of any such exceptions upon all parties of record and staff. Such exceptions shall fully set forth the error claimed and the basis in law and fact therefore, with exceptions to findings of

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fact supported by citations to the record. A party's failure to serve or file timely written exceptions shall constitute a waiver of any objections to the recommended or proposed order.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53, 120.57, 120.58, F.S.

History: New 12/21/81, formerly 25-22.57, Amended 3/23/93

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25-22.057 Recommended Order, Exceptions, Replies, Staff  
Recommendations.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 12/21/81, formerly 25-22.57, Repealed 3/23/93

25-22.058 Oral Argument.

(1) The Commission may grant oral argument upon request of any party to a section 120.57, F.S. formal hearing. A request for oral argument shall be contained on a separate document and must accompany the pleading upon which argument is requested. The request shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it raised by exceptions or responses. Failure to file a timely request for oral argument shall constitute waiver thereof.

(2) If granted, oral argument shall be conducted at a time and place determined by the Commission. Unless otherwise specified in the notice, oral argument shall be limited to 15 minutes to each party. The staff attorney may participate in oral argument.

(3) Requests for oral argument on recommended or proposed orders and exceptions pursuant to section 120.58(1)(e), F.S., must be filed no later than 10 days after exceptions are filed.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, 120.58(1)(e), F.S.

History: New 12/21/81, formerly 25-22.58, Amended 3/23/93



25-22.0021 Agenda Conference Participation.

(1) Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.

(2) When a recommendation is presented and considered in a proceeding where a hearing has been held, no person other than staff who did not testify at the hearing and the Commissioners may participate at the agenda conference. Oral or written presentation by any other person, whether by way of objection, comment, or otherwise, is not permitted, unless the Commission is considering new matters related to but not addressed at the hearing.

(3) Nothing in this rule shall preclude the Commission from making decisions during the course of or at the conclusion of a hearing.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 3/23/93