

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 3, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *S.M.L.*
RE: Docket No. 20050108-OT

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2018 AUG -3 PM 2:31
COMMISSION
CLERK

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

December 11, 2006

VIA FACSIMILE

Mr. John Rosner, Senior Attorney
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, Florida 32399-1300

Re: Docket No. 050108-OT - Proposed revisions to rules in Chapter 25-22 and 25-40, F.A.C.

Dear Mr. Rosner:

Pursuant to our telephone conversation today, we have made changes to Rules 25-22.0021 and 25-22.0022, the Law Implemented and Specific Authority.

We plan to file the rules for adoption on December 12, 2006.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel

LDH

050108 JAPC Changes.ldh.doc

Enclosure

c: Division of the Commission Clerk
and Administrative Services

1 **25-22.0021 Agenda Conference Participation.**

2 (1) Participation at agenda conferences may be informal or by oral argument. The
3 Commission determines when and whether participation is allowed in accordance with this
4 rule. The notice for each agenda conference contains a list of items to be discussed, and
5 identifies the type of participation allowed. The notice is available in hard copy or on the
6 Commission's internet site, www.psc.state.fl.us/agendas, at least seven days before the agenda
7 conference.

8 (2) Any person who may be affected by an item set for agenda conference will be
9 allowed to address the Commission informally concerning that item when it is taken up for
10 discussion, except as provided in subsections (3) – (8), below. To participate informally,
11 affected persons need only appear at the agenda conference and request the opportunity to
12 address the Commission on an item listed on the agenda.

13 (3) Informal participation is not permitted on dispositive motions and motions for
14 reconsideration. Participation on such items is governed by Rule 25-22.022, F.A.C.

15 (4) Informal participation is not permitted when a recommended order is taken up
16 by the Commission. For purposes of this rule and Rule 25-22.022, F.A.C., a recommended
17 order is one prepared by an administrative law judge at the Division of Administrative
18 Hearings, or by a Commissioner appointed by the Chair to conduct a hearing pursuant to
19 Section 350.01(7), Florida Statutes. Participation on such items is governed by Rule 25-
20 22.022, F.A.C.

21 (5) Informal participation is not permitted in a rulemaking proceeding after the
22 record has been closed.

23 (6) Informal participation, except by non-testifying staff, is not permitted when the
24 Commission considers a post-hearing recommendation on the merits of a case after the close
25 of the record.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 (7) In certain types of cases in which the Commission issues an order based on a
2 given set of facts without hearing, such as declaratory statements and interim rate orders, the
3 Commission allows informal participation at its discretion.

4 (8) The Commission reserves the discretion to limit or restrict informal
5 participation as needed to ensure the orderly disposition of matters before it. In limiting or
6 restricting informal participation the Commission will consider such things as the number of
7 persons who wish to address the Commission on an item, the number of items to be taken up
8 at the agenda conference, the procedural status of the docket to which the item pertains, and
9 the complexity of the issues addressed in an item.

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

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

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

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

23 Specific Authority ~~350.01(7), 350.127(2) FS.~~

24 Law Implemented ~~120.569(1), 120.57(1), 120.57(2)(a) FS.~~

25 History—New 3-23-93, Amended _____.

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1 **25-22.0022 Oral Argument Rule.**

2 (1) Oral argument must be sought by separate written request filed concurrently
3 with the motion on which argument is requested, or no later than 10 days after exceptions to a
4 recommended order are filed. Failure to timely file a request for oral argument shall constitute
5 waiver thereof. Failure to timely file a response to the request for oral argument waives the
6 opportunity to object to oral argument. The request for oral argument shall state with
7 particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the
8 Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating
9 the issues to be decided, and the amount of time requested for oral argument.

10 (2) The Commission may request oral argument on matters over which it presides.
11 The Prehearing Officer may request oral argument on matters over which he or she presides.
12 The parties will be notified directly when oral argument is scheduled.

13 (3) Granting or denying a request for oral argument is within the sole discretion of
14 the Commission or the Prehearing Officer whichever presides over the matter to be argued.

15 (4) The staff attorney assigned to the docket may participate in any oral argument
16 on that docket.

17 (5) Oral argument will not be entertained on a post-hearing recommendation on the
18 merits of the case. However, when the Commission votes on a recommended order requests
19 for oral argument will be entertained.

20 (6) Oral argument will not be entertained on a request for oral argument.

21 (7) Oral argument at an agenda conference.

22 (a) Oral argument at agenda conference will only be entertained for recommended
23 orders and dispositive motions, such as motions to dismiss, motions for summary final order,
24 and motions for reconsideration of non-final or final orders. Only parties to the docket and the
25 staff attorney may participate in the oral argument.

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1 **(b)** The Commission can request oral argument on any issue to be decided by a
2 dispositive motion or recommended order. The listing of the dispositive motion or
3 recommended order on the notice of the agenda conference shall serve as notice to the parties
4 to be prepared for oral argument on all issues associated with the dispositive motion or
5 recommended order on the agenda, even if a request for oral argument has not been made by a
6 party, or if a request made by a party pertains to a limited number of issues. Notice of the
7 agenda conference can be found at www.psc.state.fl.us/agendas, as explained in Rule 25-
8 22.0021(1), F.A.C.

9 **(c)** If a request for oral argument filed by a party is scheduled to be taken up at an
10 agenda conference, and the request is granted at that time, the oral argument will occur at that
11 agenda conference. At the agenda conference where the request is taken up, parties should be
12 prepared to proceed with oral argument on all issues pertaining to the dispositive motion or
13 recommended order, whether raised in the request for oral argument or not. Notice that such a
14 request will be taken up is provided at www.psc.state.fl.us/agendas, as explained in Rule 25-
15 22.0021(1), F.A.C.

16 **(d)** This rule does not restrict the scheduling of oral arguments to agenda
17 conferences. Oral arguments can be scheduled at any time, in which case the parties will be
18 directly notified of the time and place.

19 Specific Authority 350.01(7), 350.127(2) FS

20 Law Implemented 120.569(1), 120.57(1), 120.57(2)(a) FS

21 History – New _____.

22
23 **25-22.029 Point of Entry Into Proposed Agency Action Proceedings.**

24 **(1)** After agenda conference, the Division of the Commission Clerk and
25 Administrative Services shall issue written notice of the proposed agency action (PAA),

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STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR
ISILIO ARRIAGA



OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

November 18, 2005

Mr. Michael Hansen, Secretary
Administration Commission
Office of the Governor
The Capitol, Rm. 1801
Tallahassee, FL 32399-0001



Dear Mr. Hansen:

Enclosed for filing with the Administration Commission is a petition to amend exceptions to the Uniform Rules of Procedure and to create an exception to the Uniform Rules of Procedure. In addition, a copy of the petition is enclosed which I ask that you date stamp with the filing date and return to me in the stamped, addressed envelop, also enclosed. If you have any questions or concerns about the petition, please call me at 413-6230.

Sincerely,

Marlene K. Stern

Marlene K. Stern
Associate General Counsel

Enclosure

**BEFORE THE ADMINISTRATION COMMISSION
OF THE STATE OF FLORIDA**

**FLORIDA PUBLIC SERVICE COMMISSION'S) AC CASE #
PETITION TO AMEND ITS EXCEPTIONS AND)
CREATE AN EXCEPTION TO THE UNIFORM) FILED: November 18, 2005
RULES OF PROCEDURE)**

**FLORIDA PUBLIC SERVICE COMMISSION'S PETITION TO AMEND ITS
EXCEPTIONS AND CREATE AN EXCEPTION TO THE UNIFORM RULES OF
PROCEDURE**

In Final Order No. APA 98-007, issued on June 24, 1998, in Case No. APA-98-007, the Administration Commission granted the petition of the Florida Public Service Commission ("PSC") for exceptions to the Uniform Rules of Procedure. Pursuant to Section 120.54(5), Florida Statutes, and Rule 28-108.001, Florida Administrative Code, the PSC seeks permission to amend some of its rules which are exceptions to the Uniform Rules, and to create a new rule as an exception to the Uniform Rules. The existing exceptions that the PSC proposes to amend pertain to Chapter 28-102, Agenda and Scheduling of Meetings, and Chapter 28-106, Decisions Determining Substantial Interests. The proposed new rule, Rule 25-22.0022, is on the procedures for requesting oral argument at an agenda conference and during a hearing proceeding, so it also pertains to Chapters 28-102 and 28-106. The proposed new exception is actually comprised of text from several existing exceptions.

The existing exceptions were granted because they allowed for the most efficient operation of the PSC or because they were necessary to implement statutes other than Chapter 120. The proposed amendments and new exception are needed for the same reasons. The proposed changes are to Chapter 25-22, Florida Administrative Code, Rules Governing Practice and Procedure, and Chapter 25-40, Florida Administrative Code, Exceptions to the Uniform

Rules. The text of proposed changes to these rules are contained in Attachment 1 to this Petition, and described below.

Rule 25-22.0021 – Agenda Conference Participation

This existing rule is an exception to Chapter 28-102, Agenda and Scheduling of Meetings and Workshops, and was granted for the most efficient operation of the agency. The PSC must deliberate and vote on agency action in public, and it holds Agenda Conferences to do so.

The amendments more clearly delineate when a motion for oral argument is required in order to participate at an agenda conference, and when participation is informal, requiring no motion. The existing rule has proven to be confusing in this respect. The amendments allow informal participation in the majority of circumstances, which is consistent with the existing rule. The amendments make clear that informal participation is not allowed: 1) on dispositive motions; 2) when a post-hearing recommendation on the merits of a case is taken up by the Commission, unless expressly requested by the Commission; 3) when a petitioner is entitled to relief on a prima facie showing of facts (e.g., request for interim rate increase, declaratory statement); and 4) when the Commission votes on a recommended order. Most of these proposed amendments are also consistent with the existing rules but are more clearly stated. The second proposed amendment listed above changes the current rule in that it allows the Commission to hear oral argument on the merits after the close of the record if the Commission wants. In addition, provisions on requirements for participation on motions for reconsideration, currently in Rules 25-22.0367 and 25-22.060 (existing exceptions) are incorporated in the proposed amendments to Rule 25-22.0021.

Rule 25-22.0022 – Oral Argument Rule

This is a proposed new PSC rule and a proposed new exception to the Uniform Rules. The exception is needed for the most efficient operation of the agency. It incorporates provisions on oral argument that are scattered throughout existing Rules 25-22.0367, Reconsideration of Non-Final Orders, 25-22.058, Oral Argument, and Rule 25-22.060, Motion for Reconsideration. It also clarifies procedures on oral argument at Agenda Conferences versus oral argument before a prehearing officer.

Proposed Rule 25-22.0022(7) expressly addresses oral argument at agenda conferences. The lack of a rule on oral argument at agenda conferences has created much confusion in the past, which this new rule aims to eliminate. Subsection (7) provides that oral argument at an agenda conference will only be entertained for recommended orders, and dispositive motions, unless the Commission expressly invites oral argument on other occasions. For oral argument on recommended orders, the request for oral argument must be filed no later than 10 days after exceptions are filed. This requirement is transferred from the existing rule on oral argument, 25-22.058, which is proposed to be deleted. Requests for oral argument on dispositive motions must be filed with the motion. Subsection (7) also advises the parties to come prepared to argue all issues associated with a proposed order or dispositive motion, even if the request for oral argument does not request that all issues be argued. Finally subsection (7) provides that when the published agenda shows that a request for oral argument will be an item taken up at an agenda conference, the published agenda serves as notice to the parties that they should come prepared for oral argument on all issues associated with the underlying motion.

Rule 25-22.029 – Point of Entry Into Proposed Agency Action Proceedings

The main proposed revision to this rule allows a substantially affected person or Commission staff to file a cross-petition within 10 days of service of the initial petition on proposed agency action (PAA). For most agencies, when a PAA order is protested parties are free to litigate any issue they want, whether it is raised in the protest or not. There is no need to file a cross-petition to raise an issue. Thus, the Uniform rules do not address filing of cross-petitions.

Under Section 120.80(13)(b), Florida Statutes, which applies only to the PSC, issues which are not expressly called into dispute by a petition are deemed stipulated. If a protest is filed on the last day of the protest period, as is often the case, then the only issues that can be litigated are those identified in the protest. Under the proposed rule, substantially affected persons, who may not have protested but may not have been happy with the order, can file a cross-petition within 10 days of the filing of the initial protest if they want to raise additional issues. This exception is needed to implement Section 120.80(13)(b), which is not addressed in the Uniform Rules.

Additional proposed amendments are needed for the most efficient operation of the agency. The proposed amendment to Rule 25-22.029(2) eliminates the provision that publication of notice of proposed agency action in a newspaper may be used in establishing the date the notice was received. The proposed addition of Rule 25-22.029(4) provides that the Commission will not entertain a motion for reconsideration of proposed agency action. This is not a new requirement. It is currently in Rule 25-22.060(1)(a) which actually pertains to final orders, not PAA orders.

Rule 25-22.0367 – Reconsideration of Non-Final Orders

This rule was made an exception for the most efficient operation of the agency. Rule 25-22.0367(5), pertaining to oral argument on motions for reconsideration of non-final orders, is proposed for deletion and is incorporated in modified form into the newly proposed Oral Argument Rule at 25-22.0022(7)(a). Under the proposed amendments, a motion for reconsideration of a non-final order is considered a dispositive motion, and if a request for oral argument on the motion is filed in accordance with Rule 25-22.0022, the oral argument may occur at an agenda conference. Informal participation on a motion for reconsideration of a non-final order is not permitted and the proposed revisions make this clear. The amendment makes clear that a request for oral argument must be submitted. It addresses the problem that participants at an agenda conference believed that they could address the PSC informally on motions for reconsideration of non-final orders.

The other proposed change to this rule is deletion from Rule 25-22.0367(5) of the following sentence: “A party who fails to file a written response to a point on reconsideration shall be precluded from responding to that point during oral argument.” This provision should be eliminated because it makes it possible for a party to raise a few key issues and many less significant issues in its motion for reconsideration, with the latter lacking adequate support. In such situations, a responding party might concentrate on what it believes are the most important issues, and not address every single issue raised by the motion. If the moving party then based its oral argument on some of the minor issues, the responding party would be precluded from arguing before the Commission. Thus, the purpose of an oral argument, to better inform the Commission, would be circumvented. Furthermore, in practice the Commission does not follow this part of the existing rule. For these reasons the sentence is proposed to be eliminated.

Rule 25-22.058 – Oral Argument

This rule was made an exception for the most efficient operation of the agency. The PSC proposes to repeal it in full and incorporate it into proposed Rule 25-22.0022. The first and second subsections of Rule 25-22.058, dealing with procedures for filing a request for oral argument and notice, are addressed in subsections (1), (2) and (7) of proposed Rule 25-22.0022. Subsection (2) of the existing rule limits oral argument to 15 minutes unless otherwise specified. Subsection (1) of proposed Rule 25-22.0022 requires the movant to state the time needed for oral argument. Subsection (3) of the existing rule, dealing with recommended orders, is incorporated into proposed rules 25-22.0022 (2), (3), (5) and (7).

Deletion of this rule and replacement with the proposed Rule 25-22.0022 should eliminate much of the confusion associated with oral argument at agenda conferences. This existing rule creates confusion because it is the most detailed rule we have on oral argument but it is located in Part IV.D of Chapter 25-22, which pertains to post-hearing procedures. Thus, the rule's application is intended to be limited to post-hearing procedures. However, attempts are made to apply the rule in many more situations than post-hearing because the need for oral argument most often arises other situations. Compounding the problem is the provision in existing Rule 25-22.0021(2) that prohibits oral presentation on a post-hearing recommendation at an agenda conference by anyone other than non-testifying staff. Thus, under the existing rules, we have a rule seeming to allow post-hearing oral argument and another rule which prohibits post-hearing oral argument by the parties.

Rule 25-22.060 – Motion for Reconsideration

This rule was made an exception for the most efficient operation of the agency. The title of this rule is proposed to be changed to "Motion for Reconsideration of Final Orders" because it

is located in the post-hearing section of Chapter 25-22. In addition, there is already a rule titled “Reconsideration of Non-Final Orders” and this proposed change makes clear that Rule 25-22.060 is not intended to apply to reconsideration of both types of orders.

Three provisions of this rule pertaining to PAA orders and oral argument are proposed to be amended as follows: 1) in existing paragraph 25-22.060(1)(a), the language prohibiting reconsideration of PAA orders is being moved to Rule 25-22.029, which deals with proposed agency action; 2) the first sentence of provision 25-22.060(1)(f), stating that granting or denying a request for oral argument is at the sole discretion of the Commission, is moved to 25-22.0022(3); and 3) the last sentence of provision 25-22.060(1)(f), stating that a party who fails to file a written response to a point on reconsideration is precluded from responding to that point during oral argument, is proposed to be deleted. The proposed amendments to Rule 25-22.0021, Agenda Conference Participation, make clear that informal participation on motions for reconsideration is not allowed, and that a request for oral argument must be filed if a party wants to discuss such a motion before the Commission.

Rule 25-40.001 – Exceptions to the Uniform Rules of Procedure

This existing rule consists entirely of a table listing the exceptions approved by the Administration Commission, and the corresponding provisions of the Uniform Rules that they replace. The table has to be amended to include the newly proposed oral argument rule, Rule 25-22.0022, to delete the existing oral argument rule, Rule 25-22.058, and to add an explanation for proposed cross petition rule, 25-22.029(3). All the other amendments proposed herein do not require amendment of the table.

WHEREFORE, the Florida Public Service Commission respectfully requests that the Administration Commission grant the amendments proposed herein.

Respectfully submitted



MARLENE K. STERN
Associate General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0863
850-413-6230 - Phone

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by U.S. Mail or hand-delivered this 18th day of November, 2005.

Jeb Bush
Governor
PL02 The Capitol
Tallahassee, FL 32399

Charlie Crist
Attorney General
PL01 The Capitol
Tallahassee, FL 32399

Tom Gallagher
Chief Financial Officer
PL11 The Capitol
Tallahassee, FL 32399

Charles H. Bronson
Agriculture Commissioner
PL08 The Capitol
Tallahassee, FL 32399

Scott Boyd, Executive Director
and General Counsel
Joint Administrative Procedures
Committee
Room 120, Holland Building
Tallahassee, FL 32399-1300

Liz Cloud, Bureau Chief
Bureau of Administrative Code
Division of Elections
Department of State
401 South Monroe Street
Tallahassee, FL 32399-0250



MARLENE K. STERN
Associate General Counsel
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0863
850-413-6230 - Phone

1 CHAPTER 25-22

2 *Part I – General Provisions*

3 **25-22.0021 Agenda Conference Participation.**

4 (1) Participation at agenda conferences may be informal or by oral argument. The
5 Commission determines when and whether participation is allowed in accordance with this
6 rule. The notice for each agenda conference contains a list of items to be discussed, and
7 identifies the type of participation allowed. The notice is available in hard copy or on the
8 Commission’s internet site, www.psc.state.fl.us/agendas, at least seven days before the
9 agenda conference.

10 (2) Any person who may be affected by an item set for agenda conference will be
11 allowed to address the Commission informally concerning that item when it is taken up for
12 discussion, except as provided in subsections (3) - (8), below. To participate informally,
13 affected persons need only appear at the agenda conference and request the opportunity to
14 address the Commission on an item listed on the agenda.

15 (3) Informal participation is not permitted on dispositive motions and motions for
16 reconsideration. Participation on such items is governed by Rule 25-22.0022.

17 (4) Informal participation is not permitted when a recommended order is taken up by
18 the Commission. For purposes of this rule and Rule 25-22.0022, a recommended order is one
19 prepared by an administrative law judge at the Division of Administrative Hearings, or by a
20 Commissioner appointed by the Chair to conduct a hearing pursuant to Section 350.01(7),
21 Florida Statutes. Participation on such items is governed by Rule 25-22.0022.

22 (5) Informal participation is not permitted in a rulemaking proceeding after the record
23 has been closed.

24 (6) Informal participation, except by non-testifying staff, is not permitted when the
25 Commission considers a post-hearing recommendation on the merits of a case after the close

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2 (7) In certain types of cases in which the Commission issues an order based on a given
 3 set of facts without hearing, such as declaratory statements and interim rate orders, the
 4 Commission allows informal participation at its discretion.

5 (8) The Commission reserves the discretion to limit or restrict informal participation as
 6 needed to ensure the orderly disposition of matters before it. In limiting or restricting informal
 7 participation the Commission will consider such things as the number of persons who wish to
 8 address the Commission on an item, the number of items to be taken up at the agenda
 9 conference, the procedural status of the docket to which the item pertains, and the complexity
 10 of the issues addressed in an item.

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

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

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

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

24 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.525 FS. History—New 3-
 25 23-93, Amended _____.

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1 25-22.0022 Oral Argument Rule

2 (1) Oral argument must be sought by separate written request filed concurrently with
3 the motion on which argument is requested, or no later than 10 days after exceptions to a
4 recommended order are filed. Failure to timely file a request for oral argument shall constitute
5 waiver thereof. Failure to timely file a response to the request for oral argument waives the
6 opportunity to object to oral argument. The request for oral argument shall state with
7 particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the
8 Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating
9 the issues to be decided, and the amount of time requested for oral argument.

10 (2) The Commission may request oral argument on matters over which it presides.
11 The Prehearing Officer may request oral argument on matters over which he or she presides.
12 The parties will be notified directly when oral argument is scheduled.

13 (3) Granting or denying a request for oral argument is within the sole discretion of the
14 Commission or the Prehearing Officer whichever presides over the matter to be argued.

15 (4) The staff attorney assigned to the docket may participate in any oral argument on
16 that docket.

17 (5) Except when invited by the Commission, oral argument will not be entertained on
18 a post-hearing recommendation on the merits of the case. However, when the Commission
19 votes on a recommended order requests for oral argument will be entertained.

20 (6) Oral argument will not be entertained on a request for oral argument.

21 (7) Oral argument at an agenda conference.

22 (a) Except when invited by the Commission, oral argument at agenda conference will
23 only be entertained for recommended orders and dispositive motions, such as motions to
24 dismiss, motions for summary final order, and motions for reconsideration of non-final or final
25 orders. Only parties to the docket and the staff attorney may participate in the oral argument.

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1
2 **(b) The Commission can request oral argument on any issue to be decided by a**
3 **dispositive motion or recommended order. The listing of the dispositive motion or**
4 **recommended order on the notice of the agenda conference shall serve as notice to the parties**
5 **to be prepared for oral argument on all issues associated with the dispositive motion or**
6 **recommended order on the agenda, even if a request for oral argument has not been made by a**
7 **party, or if a request made by a party pertains to a limited number of issues. Notice of the**
8 **agenda conference can be found at www.psc.state.fl.us/agendas, as explained in Rule 25-**
9 **22.0021(1).**

10 **(c) If a request for oral argument filed by a party is scheduled to be taken up at an**
11 **agenda conference, and the request is granted at that time, the oral argument will occur at that**
12 **agenda conference. At the agenda conference where the request is taken up, parties should be**
13 **prepared to proceed with oral argument on all issues pertaining to the dispositive motion or**
14 **recommended order, whether raised in the request for oral argument or not. Notice that such a**
15 **request will be taken up is provided at www.psc.state.fl.us/agendas, as explained in Rule 25-**
16 **22.0021(1).**

17 **(d) This rule does not restrict the scheduling of oral arguments to agenda conferences.**
18 **Oral arguments can be scheduled at any time, in which case the parties will be directly notified**
19 **of the time and place.**

20 *New Specific Authority 350.01, 350.127(2) FS. Law Implemented 120.569, 120.57(1), FS*

21 ***Part III – Declaratory Statements (no changes)***

22 ***Part IV – Decisions Determining Substantial Interests***

23 ***IV. A. General Provisions***

24 **25-22.029 Point of Entry Into Proposed Agency Action Proceedings.**

25 (1) After agenda conference, the Division of the Commission Clerk and Administrative

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 Services shall issue written notice of the proposed agency action (PAA), advising all parties of
 2 record that, except for PAA orders establishing a price index pursuant to Section
 3 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which to file
 4 a request for a Section 120.569 or 120.57, Florida Statutes, hearing. For PAA orders
 5 establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, ~~t~~The time for
 6 requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from
 7 issuance of the notice. ~~for PAA orders establishing a price index pursuant to Section~~
 8 ~~367.081(4)(a), Florida Statutes~~. The Commission will require a utility to serve written notice
 9 of the PAA on its customers if the Commission finds that it is necessary in order to afford
 10 adequate notice.

11 (2) The Commission will require a utility to publish notice of the decision in
 12 newspapers of general circulation in its service area if the Commission finds that it is
 13 necessary in order to afford adequate notice. ~~Any such publication may be used in establishing~~
 14 ~~the date of receiving notice.~~

15 (3) One whose substantial interests may or will be affected by the Commission's
 16 proposed action may file a petition for a Section 120.569 or 120.57, Florida Statutes, hearing,
 17 in the form provided by Rule 28-106.201, F.A.C. Any such petition shall be filed within the
 18 time stated in the notice issued pursuant to subsection (1), of this rule, and shall identify the
 19 particular issues in the proposed action that are in dispute. Within 10 days of service of the
 20 initial petition, any other person substantially affected by the proposed agency action or
 21 Commission staff may file a cross-petition identifying additional particular issues on which a
 22 hearing is requested. Issues in the proposed action that are not identified in the petition or a
 23 cross-petition shall be deemed stipulated.

24 (4) The Commission will not entertain a motion for reconsideration of a notice of
 25 proposed agency action.

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
 from existing law.

1 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57, 364.05,
 2 366.06, 367.081, 367.081(4)(a), 367.0817, 120.80(13)(b) FS. History–New 12-21-81,
 3 Formerly 25-22.29, Amended 7-8-92, 5-3-99, _____.

4 ***IV. B. Prehearing Procedures***

5 **25-22.0376 Reconsideration of Non-Final Orders.**

6 (1) Any party who is adversely affected by a non-final order may seek reconsideration
 7 by the Commission panel assigned to the proceeding by filing a motion in support thereof
 8 within 10 days after issuance of the order. The Commission shall not entertain a motion for
 9 reconsideration of an order disposing of a motion for reconsideration.

10 (2) A party may file a response to a motion for reconsideration within 7 days after
 11 service of the motion for reconsideration.

12 (3) Failure to timely file a motion for reconsideration or a response shall constitute a
 13 waiver of the right to do so.

14 (4) Any motion or response filed pursuant to this rule shall contain a concise statement
 15 of the grounds therefore and the signature of counsel or other person filing the motion.

16 (5) The Commission will not entertain a motion for reconsideration of a notice of
 17 proposed agency action.

18 ~~(5) Oral argument on any motion filed pursuant to this rule may be granted at the~~
 19 ~~discretion of the Commission. A party who fails to file a written response to a point on~~
 20 ~~reconsideration shall be precluded from responding to that point during oral argument.~~

21 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History–
 22 New 9-3-95, Amended 7-11-96, _____.

23 ***IV. C. Conduct of Formal Proceedings (no change)***

24 ***IV. D. Post-hearing Procedures***

25 **25-22.058 Oral Argument.**

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions
 from existing law.

1 (1) ~~The Commission may grant oral argument upon request of any party to a Section~~
 2 ~~120.57, Florida Statutes, formal hearing. A request for oral argument shall be contained on a~~
 3 ~~separate document and must accompany the pleading upon which argument is requested. The~~
 4 ~~request shall state with particularity why oral argument would aid the Commission in~~
 5 ~~comprehending and evaluating the issues before it. Failure to file a timely request for oral~~
 6 ~~argument shall constitute waiver thereof.~~

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

10 (3) ~~Requests for oral argument on recommended or proposed orders and exceptions~~
 11 ~~pursuant to Section 120.58(1)(e), Florida Statutes, must be filed no later than 10 days after~~
 12 ~~exceptions are filed.~~

13 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—
 14 New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Repealed _____.

15 **25-22.060 Motion for Reconsideration of Final Orders.**

16 (1) Scope and General Provisions.

17 (a) Any party to a proceeding who is adversely affected by an order of the Commission
 18 may file a motion for reconsideration of that order. The Commission will not entertain any
 19 motion for reconsideration of any order ~~that~~ which disposes of a motion for reconsideration.
 20 ~~The Commission will not entertain a motion for reconsideration of a Notice of Proposed~~
 21 ~~Agency Action issued pursuant to Rule 25-22.029, F.A.C., regardless of the form of the~~
 22 ~~Notice and regardless of whether or not the proposed action has become effective under~~
 23 ~~subsection 25-22.029(6), F.A.C.~~

24 (b) A party may file a response to a motion for reconsideration and may file a cross
 25 motion for reconsideration. A party may file a response to a cross motion for reconsideration.

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
 from existing law.

1 (c) A final order shall not be deemed rendered for the purpose of judicial review until
 2 the Commission disposes of any motion and cross motion for reconsideration of that order, but
 3 this provision does not serve automatically to stay the effectiveness of any such final order.
 4 The time period for filing a motion for reconsideration is not tolled by the filing of any other
 5 motion for reconsideration.

6 (d) Failure to file a timely motion for reconsideration, cross motion for
 7 reconsideration, or response, shall constitute waiver of the right to do so.

8 (e) A motion for reconsideration of an order adopting, repealing, or amending a rule
 9 shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under
 10 Section 120.54(7 ~~5~~), Florida Statutes, and Rule 28-103.006 ~~25-22.012~~, F.A.C.

11 ~~(f) Oral argument on any pleading filed under this rule shall be granted solely at the~~
 12 ~~discretion of the Commission. A party who fails to file a written response to a point on~~
 13 ~~reconsideration is precluded from responding to that point during the oral argument.~~

14 (2) Contents. Any motion or response filed pursuant to this rule shall contain a concise
 15 statement of the grounds for reconsideration, and the signature of counsel, if any.

16 (3) Time. A motion for reconsideration of a final order shall be filed within 15 days
 17 after issuance of the order. A response to a motion for reconsideration or a cross motion for
 18 reconsideration shall be served within 7 days of service of the motion for reconsideration to
 19 which the response or cross motion is directed. A response to a cross motion for
 20 reconsideration shall be served within 7 days of service of the cross motion.

21 Specific Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History—
 22 New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96, _____.

23
 24 Oral Argument Rule/text second draft.mks.doc

1 CHAPTER 25-40

2 EXCEPTIONS TO THE UNIFORM RULES OF PROCEDURE

3 25-40.001 Exceptions to the Uniform Rules of Procedure4 **25-40.001 Exceptions to the Uniform Rules of Procedure.**

5 The following provisions of the Commission's rules are exceptions to the uniform rules of
6 procedure:

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
9 CHAPTER 28-102 10 AGENDA AND SCHEDULING OF 11 MEETINGS AND WORKSHOPS	25-22.0021 Agenda Conference Participation.
12 <u>CHAPTER 28-102 - AGENDA AND</u> 13 <u>SCHEDULING OF MEETINGS AND</u> 14 <u>WORKSHOPS AND CHAPTER 28-106</u> 15 <u>- DECISIONS DETERMINING</u> 16 <u>SUBSTANTIAL INTERESTS</u>	<u>25-22.0022</u> <u>Oral Argument Rule</u>
17 28-102.001 18 Notice of Public Meeting, Hearing, or 19 Workshop.	25-22.001 Notice of Meeting or Workshop.
20 28-102.002(2) 21 Agenda of Meetings, Hearings, and 22 Workshops.	25-22.002 Agenda of Meetings.
23 CHAPTER 28-103 24 RULEMAKING	25-22.017 Rulemaking Proceeding -- Adoption.

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1	CHAPTER 28-106	25-22.006
2	DECISIONS DETERMINING	Confidential Information.
3	SUBSTANTIAL INTERESTS	25-22.029
4		Point of Entry Into Proposed Agency Action
5		Proceedings.
6		25-22.0376
7		Reconsideration of Non-Final Orders.
8		25-22.0406(7)-(8)
9		Notice and Public Information on General
10		Rate Increase Requests by Electric, Gas and
11		Telephone Companies.
12		25-22.0407(8) and (10)
13		Notice of and Public Information for
14		General Rate Increase Requests by Water
15		and Wastewater Utilities.
16		25-22.058
17		Oral Argument.
18		25-22.060
19		Motion for Reconsideration.
20	28-106.104	25-22.028
21	Filing.	Filing, Number of Copies.
22	28-106.205	25-22.039
23	Intervention.	Intervention.
24		
25		

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1	28-106.208	25-22.029
2	Notice of Hearing.	Point of Entry into PAA Proceeding.
3		25-22.0405
4		Notices of Hearings.
5	28-106.212	25-22.045
6	Subpoenas.	Subpoenas.
7	CHAPTER 28-107 LICENSING	25-22.075 Transmission Line Permitting
8		Proceedings.
9		25-22.080 Electrical Power Plant Permitting
10		Proceedings.

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Specific Authority 120.54(5)(a)3. FS.

Law Implemented 120.54(5)(a)3. FS.

History-New 4-28-99. Amended _____

CH 40 text.mks.doc

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COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

November 29, 2006

Hand-Delivery

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, Florida 32399-1300

Re: Docket No. 050108-OT - Proposed revisions to rules in Chapter 25-22 and 25-40, F.A.C.

Dear Mr. Boyd:

The Commission has approved the amendment of Rules 25-22.0021, 25-22.029, 25-22.0376, 25-22.058, 25-22.060, ~~25-40.001~~, and the adoption of Rule 25-22.0022 without changes.

We plan to file the rules for adoption on December 7, 2006.

Sincerely,

Larry D. Harris
Associate General Counsel

LDH:wlt

Enclosure

c: Division of the Commission Clerk and Administrative Services

1 **25-22.0021 Agenda Conference Participation.**

2 (1) Participation at agenda conferences may be informal or by oral argument. The
3 Commission determines when and whether participation is allowed in accordance with this
4 rule. The notice for each agenda conference contains a list of items to be discussed, and
5 identifies the type of participation allowed. The notice is available in hard copy or on the
6 Commission's internet site, www.psc.state.fl.us/agendas, at least seven days before the agenda
7 conference.

8 (2) Any person who may be affected by an item set for agenda conference will be
9 allowed to address the Commission informally concerning that item when it is taken up for
10 discussion, except as provided in subsections (3) – (8), below. To participate informally,
11 affected persons need only appear at the agenda conference and request the opportunity to
12 address the Commission on an item listed on the agenda.

13 (3) Informal participation is not permitted on dispositive motions and motions for
14 reconsideration. Participation on such items is governed by Rule 25-22.022, F.A.C.

15 (4) Informal participation is not permitted when a recommended order is taken up
16 by the Commission. For purposes of this rule and Rule 25-22.022, F.A.C., a recommended
17 order is one prepared by an administrative law judge at the Division of Administrative
18 Hearings, or by a Commissioner appointed by the Chair to conduct a hearing pursuant to
19 Section 350.01(7), Florida Statutes. Participation on such items is governed by Rule 25-
20 22.022, F.A.C.

21 (5) Informal participation is not permitted in a rulemaking proceeding after the
22 record has been closed.

23 (6) Informal participation, except by non-testifying staff, is not permitted when the
24 Commission considers a post-hearing recommendation on the merits of a case after the close
25 of the record.

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1 (7) In certain types of cases in which the Commission issues an order based on a
2 given set of facts without hearing, such as declaratory statements and interim rate orders, the
3 Commission allows informal participation at its discretion.

4 (8) The Commission reserves the discretion to limit or restrict informal
5 participation as needed to ensure the orderly disposition of matters before it. In limiting or
6 restricting informal participation the Commission will consider such things as the number of
7 persons who wish to address the Commission on an item, the number of items to be taken up
8 at the agenda conference, the procedural status of the docket to which the item pertains, and
9 the complexity of the issues addressed in an item.

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

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

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

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

23 Specific Authority 350.01(7), 350.127(2) FS.

24 Law Implemented 120.525 FS.

25 History—New 3-23-93, Amended _____.

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1 25-22.0022 Oral Argument Rule

2 (1) Oral argument must be sought by separate written request filed concurrently
3 with the motion on which argument is requested, or no later than 10 days after exceptions to a
4 recommended order are filed. Failure to timely file a request for oral argument shall constitute
5 waiver thereof. Failure to timely file a response to the request for oral argument waives the
6 opportunity to object to oral argument. The request for oral argument shall state with
7 particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the
8 Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating
9 the issues to be decided, and the amount of time requested for oral argument.

10 (2) The Commission may request oral argument on matters over which it presides.
11 The Prehearing Officer may request oral argument on matters over which he or she presides.
12 The parties will be notified directly when oral argument is scheduled.

13 (3) Granting or denying a request for oral argument is within the sole discretion of
14 the Commission or the Prehearing Officer whichever presides over the matter to be argued.

15 (4) The staff attorney assigned to the docket may participate in any oral argument
16 on that docket.

17 (5) Oral argument will not be entertained on a post-hearing recommendation on the
18 merits of the case. However, when the Commission votes on a recommended order requests
19 for oral argument will be entertained.

20 (6) Oral argument will not be entertained on a request for oral argument.

21 (7) Oral argument at an agenda conference.

22 (a) Oral argument at agenda conference will only be entertained for recommended
23 orders and dispositive motions, such as motions to dismiss, motions for summary final order,
24 and motions for reconsideration of non-final or final orders. Only parties to the docket and the
25 staff attorney may participate in the oral argument.

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1 **(b)** The Commission can request oral argument on any issue to be decided by a
2 dispositive motion or recommended order. The listing of the dispositive motion or
3 recommended order on the notice of the agenda conference shall serve as notice to the parties
4 to be prepared for oral argument on all issues associated with the dispositive motion or
5 recommended order on the agenda, even if a request for oral argument has not been made by a
6 party, or if a request made by a party pertains to a limited number of issues. Notice of the
7 agenda conference can be found at www.psc.state.fl.us/agendas, as explained in Rule 25-
8 22.0021(1), F.A.C.

9 **(c)** If a request for oral argument filed by a party is scheduled to be taken up at an
10 agenda conference, and the request is granted at that time, the oral argument will occur at that
11 agenda conference. At the agenda conference where the request is taken up, parties should be
12 prepared to proceed with oral argument on all issues pertaining to the dispositive motion or
13 recommended order, whether raised in the request for oral argument or not. Notice that such a
14 request will be taken up is provided at www.psc.state.fl.us/agendas, as explained in Rule 25-
15 22.0021(1), F.A.C.

16 **(d)** This rule does not restrict the scheduling of oral arguments to agenda
17 conferences. Oral arguments can be scheduled at any time, in which case the parties will be
18 directly notified of the time and place.

19 Specific Authority 350.01(7), 350.127(2) FS

20 Law Implemented 120.525 FS

21 History – New

22
23 **25-22.029 Point of Entry Into Proposed Agency Action Proceedings.**

24 **(1)** After agenda conference, the Division of the Commission Clerk and
25 Administrative Services shall issue written notice of the proposed agency action (PAA),

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1 advising all parties of record that, except for PAA orders establishing a price index pursuant to
2 Section 367.081(4)(a), Florida Statutes, they have 21 days after issuance of the notice in which
3 to file a request for a Section 120.569 or 120.57, Florida Statutes, hearing. For PAA orders
4 establishing a price index pursuant to Section 367.081(4)(a), Florida Statutes, ~~t~~The time for
5 requesting a Section 120.569 or 120.57, Florida Statutes, hearing shall be 14 days from
6 issuance of the notice, ~~for PAA orders establishing a price index pursuant to Section~~
7 ~~367.081(4)(a), Florida Statutes.~~ The Commission will require a utility to serve written notice
8 of the PAA on its customers if the Commission finds that it is necessary in order to afford
9 adequate notice.

10 (2) The Commission will require a utility to publish notice of the decision in
11 newspapers of general circulation in its service area if the Commission finds that it is
12 necessary in order to afford adequate notice. ~~Any such publication may be used in establishing~~
13 ~~the date of receiving notice.~~

14 (3) One whose substantial interests may or will be affected by the Commission's
15 proposed action may file a petition for a Section 120.569 or 120.57, Florida Statutes, hearing,
16 in the form provided by Rule 28-106.201, F.A.C. Any such petition shall be filed within the
17 time stated in the notice issued pursuant to subsection (1) of this rule, and shall identify the
18 particular issues in the proposed action that are in dispute. Within 10 days of service of the
19 initial petition, any other person substantially affected by the proposed agency action or
20 Commission staff may file a cross-petition identifying additional particular issues on which a
21 hearing is requested. Issues in the proposed action that are not identified in the petition or a
22 cross-petition shall be deemed stipulated.

23 (4) The Commission will not entertain a motion for reconsideration of a notice of
24 proposed agency action.

25 Specific Authority 350.01(7), 350.127(2) FS.

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from existing law.

1 Law Implemented 120.569, 120.57, 364.05, 366.06, 367.081, 367.0817(4)(a), 367.0817,
2 120.80(13)(b) FS.

3 History—New 12-21-81, Formerly 25-22.29, Amended 7-8-92, 5-3-99,_____.

4

5 **25-22.0376 Reconsideration of Non-Final Orders.**

6 (1) Any party who is adversely affected by a non-final order may seek
7 reconsideration by the Commission panel assigned to the proceeding by filing a motion in
8 support thereof within 10 days after issuance of the order. The Commission shall not entertain
9 a motion for reconsideration of an order disposing of a motion for reconsideration.

10 (2) A party may file a response to a motion for reconsideration within 7 days after
11 service of the motion for reconsideration.

12 (3) Failure to timely file a motion for reconsideration or a response shall constitute
13 a waiver of the right to do so.

14 (4) Any motion or response filed pursuant to this rule shall contain a concise
15 statement of the grounds therefor and the signature of counsel or other person filing the
16 motion.

17 (5) The Commission will not entertain a motion for reconsideration of a notice of
18 proposed agency action.

19 ~~(5) Oral argument on any motion filed pursuant to this rule may be granted at the~~
20 ~~discretion of the Commission. A party who fails to file a written response to a point on~~
21 ~~reconsideration shall be precluded from responding to that point during oral argument.~~

22 Specific Authority 350.01(7), 350.127(2) FS.

23 Law Implemented 120.569, 120.57 FS.

24 History—New 9-3-95, Amended 7-11-96,_____.

25

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 **25-22.058 Oral Argument.**

2 ~~(1) The Commission may grant oral argument upon request of any party to a Section~~
3 ~~120.57, Florida Statutes, formal hearing. A request for oral argument shall be contained on a~~
4 ~~separate document and must accompany the pleading upon which argument is requested. The~~
5 ~~request shall state with particularity why oral argument would aid the Commission in~~
6 ~~comprehending and evaluating the issues before it. Failure to file a timely request for oral~~
7 ~~argument shall constitute waiver thereof.~~

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

11 ~~(3) Requests for oral argument on recommended or proposed orders and exceptions~~
12 ~~pursuant to Section 120.58(1)(e), Florida Statutes, must be filed no later than 10 days after~~
13 ~~exceptions are filed.~~

14 Specific Authority 350.01(7), 350.127(2) FS.

15 Law Implemented 120.569, 120.57 FS.

16 History—New 12-21-81, Formerly 25-22.58, Amended 3-23-93, Repealed _____.

17

18

19 **25-22.060 Motion for Reconsideration of Final Orders.**

20 (1) Scope and General Provisions.

21 (a) Any party to a proceeding who is adversely affected by an order of the
22 Commission may file a motion for reconsideration of that order. The Commission will not
23 entertain any motion for reconsideration of any order that which disposes of a motion for
24 reconsideration. ~~The Commission will not entertain a motion for reconsideration of a Notice~~
25 ~~of Proposed Agency Action issued pursuant to Rule 25-22.029, F.A.C., regardless of the form~~

CODING: Words underlined are additions; words in struck-through type are deletions from existing law.

1 ~~of the Notice and regardless of whether or not the proposed action has become effective under~~
2 ~~subsection 25-22.029(6), F.A.C.~~

3 (b) A party may file a response to a motion for reconsideration and may file a cross
4 motion for reconsideration. A party may file a response to a cross motion for reconsideration.

5 (c) A final order shall not be deemed rendered for the purpose of judicial review
6 until the Commission disposes of any motion and cross motion for reconsideration of that
7 order, but this provision does not serve automatically to stay the effectiveness of any such
8 final order. The time period for filing a motion for reconsideration is not tolled by the filing of
9 any other motion for reconsideration.

10 (d) Failure to file a timely motion for reconsideration, cross motion for
11 reconsideration, or response, shall constitute waiver of the right to do so.

12 (e) A motion for reconsideration of an order adopting, repealing, or amending a
13 rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under
14 Section 120.54(75), Florida Statutes and Rule 28-103.00625-22.012, F.A.C.

15 ~~(f) Oral argument on any pleading filed under this rule shall be granted solely at the~~
16 ~~discretion of the Commission. A party who fails to file a written response to a point on~~
17 ~~reconsideration is precluded from responding to that point during the oral argument.~~

18 (2) Contents. Any motion or response filed pursuant to this rule shall contain a
19 concise statement of the grounds for reconsideration, and the signature of counsel, if any.

20 (3) Time. A motion for reconsideration of a final order shall be filed within 15
21 days after issuance of the order. A response to a motion for reconsideration or a cross motion
22 for reconsideration shall be served within 7 days of service of the motion for reconsideration
23 to which the response or cross motion is directed. A response to a cross motion for
24 reconsideration shall be served within 7 days of service of the cross motion.

25 Specific Authority 350.01(7), 350.127(2) FS.

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions
from existing law.

1 Law Implemented 120.569, 120.57 FS. History—New 12-21-81,
2 Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96, _____.
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CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

1 **25-40.001 Exceptions to the Uniform Rules of Procedure.**

2 The following provisions of the Commission's rules are exceptions to the uniform rules of
 3 procedure:

UNIFORM RULE	COMMISSION RULE THAT IS AN EXCEPTION
CHAPTER 28-102 AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS	25-22.0021 Agenda Conference Participation.
<u>CHAPTER 28-102 - AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS AND CHAPTER 28-106 - DECISIONS DETERMINING SUBSTANTIAL INTERESTS</u>	<u>25-22.0022</u> <u>Oral Argument Rule</u>
28-102.001 Notice of Public Meeting, Hearing, or Workshop.	25-22.001 Notice of Meeting or Workshop.
28-102.002(2) Agenda of Meetings, Hearings, and Workshops.	25-22.002 Agenda of Meetings.

25 CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1		
2	CHAPTER 28-103	25-22.017
3	RULEMAKING	Rulemaking Proceeding -- Adoption
4		
5	CHAPTER 28-106	25-22.006
6	DECISIONS DETERMINING	Confidential information
7	SUBSTANTIAL INTERESTS	25-22.029
8		Point of Entry into Proposed Agency
9		Action Proceedings.
10		25-22.0376
11		Reconsideration of Non-Final Orders.
12		25-22.0406(7)-(8)
13		Notice and Public Information on General
14		Rate Increase Requests by Electric, Gas
15		and Telephone Companies
16		25-22.0407(8) and (10)
17		Notice of and Pubic Information for
18		General Rate Increase Requests by Water
19		and Wastewater Utilities.
20		25-22.058
21		Oral Argument
22		25-22.060
23		Motion for Reconsideration
24		
25		

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1	28-106.104	25-22.028
2	Filing	Filing, Number of Copies
3		
4	28-106.205	25-22.039
5	Intervention	Intervention.
6		
7	28-106.208	25-22.029
8	Notice of Hearing	Point of entry into PAA Proceeding.
9		25-22.0405
10		Notices of Hearing
11		
12	28-106.212	25-22.045
13	Subpoenas	Subpoenas
14		
15	CHAPTER 28-107 LICENSING	25-22.075 Transmission Line Permitting
16		Proceedings.
17		25-22.080 Electrical Power Plant
18		Permitting Proceedings.
19		
20		

21 Specific Authority 120.54(5)(a)3, FS

22 Law Implemented 120.54(5)(a)3, FS

23 History – New 4-28-99, Amended .

24

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COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
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KATRINA J. TEW

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

November 29, 2006

Hand-Delivery

Mr. Scott Boyd, Executive Director
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, Florida 32399-1300

Re: Docket No. 050108-OT - Proposed revisions to rules in Chapter 25-22 and 25-40, F.A.C.

Dear Mr. Boyd:

The Commission has approved the amendment of Rules 25-22.0021, 25-22.029, 25-22.0376, 25-22.058, 25-22.060, and the adoption of Rule 25-22.0022 without changes.

We plan to file the rules for adoption on December 11, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel

LDH:wlt

Enclosure

c: Division of the Commission Clerk and Administrative Services

TOM LEE
President



Representative Ellyn Setnor Bogdanoff, Chair
Senator Michael S. "Mike" Bennett, Vice-Chair
Senator Nancy Argenziano
Senator Larcenia J. Bullard
Representative Susan K. Goldstein
Representative Matthew J. "Matt" Meadows

ALLAN G. BENSE
Speaker



F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

November 30, 2006

Mr. Larry D. Harris
Office of the General Counsel
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Public Service Commission Rule 25-40.001

Dear Mr. Harris:

The notice of proposed rulemaking provides that the date a notice of proposed rule development was published was August 20, 2004. However, there is no record of proposed rule development in the August 20, 2004 issue of the Florida Administrative Weekly. Even if the notice had been published in that issue of the F.A.W., the rule should be withdrawn.

A notice of rule development published more than two years before a notice of proposed rulemaking is simply too long. See, section 120.545(1)(e), F.S., which directs this committee to examine proposed rules to determine whether the notice given prior to adoption was sufficient to provide adequate notice of the rule's purpose and effect.

Therefore, the rule should be withdrawn. To save time, a notice of rule development can be published in the same issue of the F.A.W. as the withdrawal.

Sincerely,

A handwritten signature in blue ink that reads "John Rosner" with the initials "by JAK" written below it.

John Rosner
Chief Attorney



STATE OF FLORIDA

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW
KEN LITTLEFIELD



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

January 23, 2007

Mr. Brian Moore
Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399-1300

Re: FPSC Proposed Rule 25-40.001, F.A.C.

Dear Mr. Moore:

Thank you for your correspondence of January 16, 2007, regarding our amendments of Rule 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure. As you suggested, we have prepared a Notice of Correction, which will be published in the February 2, 2007, edition of the Florida Administrative Weekly. A copy of the Notice is attached to this letter.

Thank you for your review of this rule, and I look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel

Enc.

Notice of Change/Withdrawal

PUBLIC SERVICE COMMISSION

RULE NO: RULE TITLE

25-40.001: Exceptions to the Uniform Rules of Procedure

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 33 No. 1, January 5, 2007 issue of the Florida Administrative Weekly.

Notice is hereby given that the following correction has been made to Rule 25-40.001, which was noticed as a proposed rule in Volume 33, No. 1, January 5, 2007, issue of the Florida Administrative Weekly. The Rule Development Notice was published in Volume 32, No. 50, December 15, 2006, instead of Volume 32, No. 44, November 3, 2006, as stated in the Notice of Rule Proposal. The foregoing correction does not affect the substance of the rule.

THE PERSON TO BE CONTACTED REGARDING THE ABOVE CORRECTION IS: Larry D. Harris, Associate General Counsel, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0852, Telephone (850) 413-6076. Docket No. 050108-OT.

050108 Correction.ldh.doc

KEN PRUITT
• President



Senator Michael S. "Mike" Bennett, Chair
Representative John Quinones, Vice-Chair
Senator M. Mandy Dawson
Senator Don Gaetz
Representative D. Alan Hays
Representative Scott Randolph

MARCO RUBIO
Speaker



F. SCOTT BOYD
EXECUTIVE DIRECTOR
AND GENERAL COUNSEL
Room 120, Holland Building
Tallahassee, Florida 32399-1300
Telephone (850) 488-9110

THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

January 16, 2007

Mr. Larry D. Harris
Associate General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Public Service Commission Proposed Rule 25-40.001

Dear Mr. Harris:

After reviewing the proposed changes to Rule 25-40.001, F.A.C., I offer the following comment for your consideration and written response:

It appears that the Notice of Proposed Rulemaking gave the wrong date for the Notice of Rule Development. Instead of being published on November 3, 2006, in Volume 32, Number 44, F.A.W., the rule development notice actually was published on December 15, 2006, in Volume 32, Number 50, F.A.W. Please publish a Notice of Correction in the F.A.W. at your earliest convenience.

If you have any questions, please feel free to contact me. Otherwise, I do not have any comments or questions regarding the proposed changes to the rule and look forward to your response regarding the notice.

Sincerely,


Brian T. Moore
Chief Attorney

RECEIVED
07 JAN 23 AM 10:20
FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

STATE OF FLORIDA

COMMISSIONERS:
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GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

October 5, 2006

Barbara Leighty, Senior Governmental Analyst
Office of Policy and Budget
Office of Governor Jeb Bush
Room 1801
The Capitol
Tallahassee, FL 32399-0001

Re: Summary of PSC Procedures

Dear Ms. Leighty:

As you requested, I am enclosing as short document which I hope will explain some of the unique procedures here at the PSC. The document was created by one of our attorney supervisors as part of a Florida Bar Continuing Legal Education program two years ago. I believe it will answer many of your questions, and is the most concise overview of Commission practices I have been able to locate.

If you have any other questions, or if I can provide any additional information, please do not hesitate to contact me at 413.6076 or lharris@psc.state.fl.us

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Harris".

Larry D. Harris
Associate General Counsel

Enclosure

Cc: Michael Cooke

INTERACTION OF THE ADMINISTRATIVE PROCEDURES ACT WITH COMMISSION PROCEDURES

Mary Anne Helton
Attorney Supervisor, Economic Regulation Section
Florida Public Service Commission

I. PSC Unique Characteristics

A. Five-member collegial body

Most agency heads - single person - decisions made out of the sunshine

Commission decisions - in the sunshine - public deliberation

Opportunity for more interaction in deliberation process for rulemaking and declaratory statements

B. Florida Administrative Procedures Act, Chapter 120, F.S., applies to PSC

The APA deadlines that define the time by which an agency must act are applicable to the Commission.

1. Unique Deadlines Imposed on PSC (see table attached as Appendix A)

However, there are some unique deadlines imposed upon the Commission in 364, 366, and 367

Cheat sheet starting on page 4.1 of the materials that lists deadlines that are unique to Commission decisions or actions.

If you look at the charts in the materials, you will see some similarities. For instance, all of the chapters have a file and suspend statute. However, in reality the file and suspend law is not really applicable to the telecom industry since there is only one ILEC, Frontier, in north west Escambia County that has not elected price cap regulation.

Industry differences have evolved over the years. For example, small, class C water and waster utilities can file an application for a staff assisted rate case (SARC), and those must be completed within 15 months from the official date of filing. To make this deadline, the staff schedules its PAA recommendation so that in the event of a protest, a hearing can be held before the expiration of the 15-month deadline.

One of the newest additions to the list is Section 364.058(3). This provision requires the Commission to create an expedited "process to facilitate the quick resolution of disputes between telecommunications companies."

The staff is working on rules to implement this statute. In the rules that ultimately get adopted, the Commission has the authority to "limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues."

2. Chapter 120 Exceptions Applicable to PSC

While the Commission is required to follow Chapter 120, the Legislature has identified certain exceptions to the APA that are laid out in section 120.80(13).

a. rulemaking related to cost-recovery clauses, factors, or mechanisms [120.80(13)(a)]

The first is an exception from rulemaking requirements for "agency statements that relate to cost-recovery clauses, factors, or mechanisms implemented pursuant to chapter 366."

Thus, the applicable policies and procedures for the fuel hearing, PGA, conservation cost recovery clauses, and the environmental cost recovery clause are embodied in Commission orders.

b. PAA protests [120.80(13)(b)]

If a PAA order is protested, "[i]ssues in the proposed agency action which are not in dispute are deemed stipulated." This means that if you protest only some of the issues in a PAA order, the other issues are deemed stipulated.

This exception, however, does not eliminate the Commission's discretion to add to the issues in a hearing to resolve a PAA protest if the Commission determines that additional issues are necessary to reach a full resolution of the matter.

c. licenses [120.80(13)(c)]

When issuing a license or certificate of operation, the Commission is exempt from the time limitations in Section 120.60(1), which sets out the APA requirement to issue a license within 90 days. However, the Legislature has determined in 367.031 that unless there is an objection, the Commission has 90 days to grant or deny an application for an original certificate to provide water and wastewater service. On one hand the legislature has acknowledged that the Commission needs more than 90 days to issue a license, and on the other, for water and wastewater original certificates, said we can do it 90 days.

d. Federal Telecommunications Act of 1996 consistency [120.80(13)(d) and (e)]

When implementing the Federal Telecommunications Act of 1996, the Commission may follow the federal procedures in the federal act instead of the Florida APA. **(d)**

This exception has been used in arbitration proceedings. Under the uniform rules, a response to a petition is not required within a specific time frame, but the Federal Act requires a response to a petition for arbitration by a time certain. In arbitration proceedings, the Commission requires parties to follow the response time frame established in the Federal Act.

Also, based in part on this exception, the Commission has not promulgated its Collocation Guidelines as rules.

Appellate jurisdiction over this Commission's decisions that implement the Federal Telecommunications Act must be consistent with the federal act. (e)

I will talk about appellate jurisdiction, and this exception at the end of my presentation.

C. Role of Staff

The Commission's statement on the role of Commission staff in a Commission proceeding can now be found on page 10 of the Commission's Statement of Agency Organization and Operation, which you can find on the Commission's web site.

There it provides that "[t]he Commission staff may participate as a party in any proceeding. Their primary duty is to represent the public interest and see that all relevant facts and issues are clearly brought before the Commission for its consideration."

Because of the complex issues that the Commission must consider, the Commission has developed a staff of attorneys, accountants, economists, financial analysts, and engineers to help the Commission make informed decisions. It is the staff's job to make sure that an adequate record is developed. To that end, staff participates in the hearing by providing basic positions to the defined issues, cross examining witnesses, and sometimes offers a witness if staff sees a potential void in the record that needs to be filled. At the conclusion of the hearing, staff does not file a post-hearing brief as do the other parties. Instead, staff reviews the record and post-hearing briefs of the other parties, and files a recommendation to the Commission for resolution of the issues in the case.

If a staff member testifies, that staff member cannot and does not advise the Commission on its ultimate decision in the case.

Because the Commission must make its decisions in the sunshine, the Commission can't delegate its authority to staff to sign off on stipulations. While the staff can participate in settlement discussions, and may be able to tell the parties whether it will recommend approval of a stipulation, staff can not sign the stipulation.

Blanca talked a little about the different divisions in the Commission. I thought I would go into a little detail about the composition of the Office of General Counsel. Back in the beginning of 2002, when the Commission was last reorganized, the Office of General Counsel was also reorganized. We used to be divided up into two divisions. We no longer have divisions within the office.

What was the Division of Appeals is now the Appeals, Rules, and Mediation Section headed up by David Smith. Like its name applies, this section houses the lawyers who handle appeals, rulemaking, and mediation as well as declaratory statements and personnel matters.

The Division of Legal Services used to have 3 bureaus. There is no longer a legal division, and what were the 3 bureaus are now two sections.

The Bureau of Telecommunications is now the Competitive Markets and Enforcement Section headed by Beth Keating. These lawyers handle the legal aspects of the telecom issues that come before the Commission.

And finally, the Bureaus of Water and Wastewater and Electric and Gas were merged to create the Economic Regulation Section. We handle the legal issues for the utilities that are still rate base regulated by the Commission, which are the electric, gas, water and wastewater utilities.

An attorney from one of these three sections is assigned to all docketed cases. The attorneys have a dual role, they represent staff, but at the end of the day, the attorneys give advice to the Commission. The attorney's ultimate client is the Commission.

The same attorney is assigned to the case from beginning to end, except in show cause proceedings. The staff who acts in a prosecutorial role in a show cause proceeding does not advise the Commission when it makes its decision.

If your case is in hearing mode, outside attorneys should not be contacting technical staff directly. If you feel you must talk to a staff member, contact the attorney assigned to the case, and get his or her permission prior to contacting the staff member.

If you have procedural questions, call the attorney assigned or the attorney supervisor.

D. Proposed Agency Action Process

E. Customer Complaints

1. Division of Consumer Affairs - Rule 25-22.032, F.A.C.

The Commission is a consumer friendly agency. The Commission has put in place the personnel and procedures to facilitate the quick resolution of customer concerns. In my time at the Commission, the Division of Consumer Affairs has grown into a sophisticated group of employees who handle on average over 2,500 hundred complaints plus 2,500 hundred information requests a month.

The Commission's goal is to handle customer complaints informally. To facilitate the resolution of informal complaints as "quickly, effectively, and inexpensively as possible," the Commission has adopted Rule 25-22.032. At this Tuesday's agenda, the Commission voted to make changes to the rule amendments it had proposed for the rule earlier this year. The notice of change

should be published on December 19, and if no one challenges the rule changes, the new rule should become effective in February of next year.

The focus of the new rule is to facilitate direct contact between the complaining customer and the company at issue. Under the new rule, the customer and company are encouraged to resolve complaints without further involvement from Commission staff beyond the initial contact.

The rule sets up three procedures for a very quick resolution of customer complaints - the telephone transfer connect (formerly known as a warm transfer), e-mail transfer, and 3-day resolution. The telephone transfer and 3-day resolution processes were in the old rule. The e-mail transfer is a pilot project that has been codified in the new rule. What is significant about these procedures is that if a resolution is reached under the parameters in the rule, the complaint is not reported by the Commission in its monthly statistics of complaints logged against each regulated company.

There are a couple of significant changes in the new rule. The first is that under the complaint resolution process, instead of staff preparing a resolution for the customer, the procedure is for staff to acknowledge the complaint, and inform the customer that there will be no further contact from the Commission unless the customer is not satisfied with the company's proposed resolution. Thus, the burden is now on the customer to get back to the Commission if he is unhappy with the complaint's resolution.

Another significant change is the manner in which informal conferences are handled. The new rule sets up a process review team made up of staff members from the Office of General Counsel, the Division of Consumer Affairs, and the appropriate technical division that will meet on an as-needed basis. This team will screen complaints to determine if they meet the criteria for an informal conference. The office of general counsel will send out closure letters for (1) cases that involve issues or concerns that fall outside the jurisdiction of the Commission, (2) the relief sought cannot be provided by the Commission, (3) the basis of the complaint is an objection to current statutes, rules, company tariffs, or orders of the Commission, or (4) it does not appear that a violation of applicable statutes, rules, company tariffs, or orders of the Commission occurred.

Very few complaints that start informally are docketed and go to the Commission for resolution.

2. Informal Complaints

3. Formal Complaints

Customers or other substantially affected persons can also file complaints with the Commission's clerk, and those complaints are treated as formal complaints and assigned a docket number. Staff members, including a lawyer, are assigned, and a CASR is established. Not all docketed complaints are automatically scheduled for a hearing. If the staff determines that the PAA process would be more efficient, then a PAA recommendation is filed after the staff had conducted its initial investigation.

II. PSC Rules of Procedure

A. PSC follows Uniform Rules of Procedure

As part of the major revisions to the APA in the mid-1990's, all state agencies were required to follow the Uniform Rules of Procedure, as adopted by the Governor and Cabinet sitting as the Administration Commission.

Section 120.54 provides, however, that an agency can petition the Administration Commission for exceptions to the Uniform Rules. In April of 1998, the Commission filed a petition seeking exceptions to the uniform rules. In its final order, the Administration Commission granted the agency exceptions for 18 rules. These exceptions are listed in Chapter 25-40 of the Administrative Code.

I can't help but get on my soap box a little here. I believe that the old version of Commission rules described the Commission's procedural process in detail, and because we now follow the uniform rules of procedure, it is more difficult for a new PSC practitioner to become acclimated to our procedures. Having said that, I do acknowledge that there is perhaps more flexibility under the current process, which can be a good thing.

Included in your materials, starting on page 4.7, there is a memo that we sent out in 1999 that has a table attached that shows whether the Commission follows the uniform rule, and the disposition of the Commission rule after the Administration Commission ruled on our petition.

I will talk about a few of the significant exceptions.

B. PSC Exceptions listed in Rule 25-40.001, F.A.C.

1. Agenda Conference Participation, Rule 25-22.0021, F.A.C.

The Commission has a liberal policy on agenda conference participation.

The rule provides that participation is allowed for all items except for post-hearing and interim rate decisions.

The rule does state that public participation may be allowed for post-hearing decisions if the Commission is "considering new matters related to but not addressed at hearing."

If you have a question about whether you will be able to participate in an agenda item, you should refer to the first page of the recommendation. In the memo part of the recommendation, on the Agenda line, it should state what level of public participation will be allowed.

If you want to participate at agenda, my advice to you is to be there at the beginning of the agenda conference, which is usually 9:30 a.m. At the beginning of each conference, the Chairman announces deferrals and any recommendations that have been withdrawn. In

addition, recommendations will be taken up out of order. If a recommendation has been identified as having no Commissioner questions, the Commission will approve the item at the beginning of the agenda conference. It is up to the practitioner or interested person to make it known at this time that he wishes to speak on the item. You may also want to call the attorney assigned to the docket at least the day before the agenda conference to let him know that you want to speak.

2. Filing, Number of Copies, Rule 25-22.028, F.A.C.

3. Oral Argument, Rule 25-22.058, F.A.C.

This rule sets up a procedure by which a party can request oral argument.

If you have filed a motion for reconsideration, and you want to argue it before the Commission, you need to file a request oral argument under this rule.

I also suggest that if you file a motion, especially a motion to dismiss or similar substantive motion that will likely be heard by the panel assigned, and you want to argue it, you may also want to file a request for oral argument under this rule.

4. Confidentiality, Rule 25-22.006, F.A.C.

Like other agencies, Chapter 119, or the public records law is applicable to the Commission.

If you give a Commission employee a document to keep, it becomes a public record. Putting a waiver on disclaimer on the front of the document that it is confidential is not sufficient to maintain the confidentiality of the document.

If you file a confidential documents with the Commission or you provide a Commission employee with a confidential document, if it is filed pursuant to chapter 364, you may file a claim under section 364.183, or you must file a notice of intent, and within 21 days, request confidential treatment as set out in Rule 25-22.006.

For a document to be granted confidential treatment, it must meet one of the definitions of "proprietary confidential business information" as set out in 364.183, 366.093, or 367.156. Included in the definition are materials such as trade secrets or information concerning bids or other contractual data.

There are few things that I should mention about the use or filing of confidential information.

If you plan to use a confidential document at hearing, you must follow the notice guidelines that are established in the order establishing procedure and the prehearing order. If you don't timely notify the Commission of your plans to use the confidential document, you may not be able to use the document at hearing.

If you use a confidential document at hearing, have enough copies of the document ready in red folders for the hearing process to go smoothly. You should have a copy for all of the Commissioners hearing the case. Three or four copies for staff. At least one copy for each party. A copy for the witness, and a copy for the court reporter. At the conclusion of your line of questioning concerning the confidential document, you should be prepared to collect all of the red folders with the possible exception of the court reporters.

If you filed confidential testimony, do not automatically assume that the Commissioners or staff have copies of your confidential testimony in the hearing room. You should have copies of the testimony available under the same procedures I just described.

If you get to hearing and determine that you don't have enough copies, there is a copy service located just inside the EATZ entrance. The clerk's office will not let you use their machines to make copies.

If you file a claim as provided in 364 and Rule 25-22.006(5), and you use the confidential information for which a claim has been filed at hearing, you must file a request for confidential treatment within 21 days of the hearing.

If you file confidential information at the Commission that belongs to another party, you need to file a notice of intent, a claim, or a letter referring to a previously filed notice regarding the same information, and inform the other party that is the holder of the confidential information that you have done so. It is then the other party's burden to file a request for confidential treatment to continue the protection of the document.

5. Point of Entry into Proposed Agency Action Proceedings, Rule 25-22.029, F.A.C.

The Commission has an exception to the uniform rules that substantially affected persons must file a protest to a PAA decision within 21 days of issuance of the order. If we had to follow the uniform rule, a protest would be required within 21 days of receipt of the order. This exception enables the Commission to establish a definite date of finality. I should caution you that the court does not consider a PAA order rendered for purposes of appellate jurisdiction until the Commission has entered a consummating order declaring the PAA order to be final and effective.

In our old rules, the Commission had the discretion to reduce the protest time period to 14-days for good cause shown. The Administration Commission denied our request to keep this exception. Now, the Commission may reduce the protest time only when the Commission establishes the price index for water and wastewater utilities.

6. Intervention, Rule 25-22.039, F.A.C.

Under the uniform rules of procedure, substantially affected persons have up to 20 days before a hearing to seek intervention, unless for good cause shown the intervenor can show that less time is warranted.

The Commission did not want to have to go through the process of determining whether good cause had been shown for a shorter intervention period, so it requested an exception for its 5 day rule. We also believed that the uniform rule was inconsistent with the APA, which requires 14-day notice prior to a hearing.

Our intervention rule provides that intervenors take the case as they finds it.

7. Reconsideration, Rules 25-22.0376 (non-final orders) and 25-22.060 (final orders), F.A.C.

We are the only agency that allows reconsideration of our orders.

I believe that we were able to keep these rules as exceptions because the legislature contemplated that the Commission could reconsider its orders in 350.01(5).

There are two rules on reconsideration. One deals with non-final orders, and the other final orders.

The rule on non-final orders was amended in 1996 to stop the practice of seeking reconsideration from the prehearing officer, and then the Commission of non-final orders. Now, you get only one shot at reconsideration for non-final orders, and that is from the panel assigned to the docket.

The legal standard is the same for both types of orders - the movant has to show that there has been a mistake of fact or law.

C. Order Establishing Procedure and Prehearing Order

The two most important orders the prehearing officer will issue prior to a hearing are the order establishing procedure and the prehearing order.

The order establishing procedure sets up the prehearing requirements of the case. The prehearing order is like a roadmap for the hearing. I can't emphasize enough that you need to read them prior to the hearing.

1. Discovery guidelines

The order establishing procedure sets out the discovery guidelines, which may be different for each case. The rules of civil procedure allow 30 days to serve a response to written discovery, plus five days for mailing. The prehearing officer may shorten the time period to less than 30 days, as well as provide the means by which discovery must be served. Thus, parties may be directed to serve discovery by e-mail or fax, which eliminates any extra time for service.

In addition, the Commission requires that any objections to written discovery must be served within a specified time period that will be established in the order establishing procedure.

2. Pre-filed testimony

The Commission requires direct and rebuttal testimony and exhibits to be prefiled. Cross-examination on the prefiled testimony is conducted live at the hearing. You may be able to pre-file testimony at DOAH, but you have to ask for permission to do so.

At DOAH, it is typical practice to qualify the witness as an expert when he takes the stand. The Commission, however, skips that step. PSC witnesses are assumed to be experts. If you wish to object to a witness' qualifications at hearing, the order establishing procedure provides that you need to list in your prehearing statement any objections to a witness' qualifications as an expert. According to the order, "failure to identify such objection may result in restriction of a party's ability to conduct voir dire."

The Commission's procedure of requiring prefiled testimony may create some problems for you.

For instance, how do you prefile the testimony of an adverse witness before the Commission? One solution might be to take the adverse witness' deposition, and ask for leave to file the deposition transcript as the prefiled testimony.

Another problem may be how do you update prefiled testimony? How do you get new facts and circumstances before the Commission that you may have discovered from discovery, after your witness' prefiled testimony was filed? One solution may be to ask the prehearing officer for leave to file supplemental testimony. I do not suggest filing supplemental testimony without asking permission first. You may also have the witness present the new information when he gives a summary of his prefiled testimony on the stand, but that practice is much riskier since the Commission's practice is to limit the summary to what was stated in the prefiled testimony.

The order establishing procedure also provides that "if a demonstrative exhibit or other demonstrative tools are to be used at hearing, they must be identified by the time of the prehearing conference." If you come to the hearing with a power point presentation, and no one knew about it before hand, you will most likely be sorely disappointed because it is doubtful you will be allowed to use it. You need to ask permission before hand to use such resources.

3 Prehearing Statements

4. Confidentiality Procedures

5. Waiver of issues and positions

Other agencies do not define the issues of administrative proceedings up front. At the Commission, the staff should conduct an issue ID conference early on at which the parties begin the formulation of the issues. Once staff has identified a set of issues, those issues are the issues that should be followed when prehearing statements are filed. It is an acceptable practice to add to the identified issues in the prehearing statement. Depending on the nature of the case and the staff involved, the prehearing officer will sometimes set the issues for a case in the order

establishing procedure. If not, the issues will definitely be set at the prehearing conference. The issues set by the prehearing officer are what guides the pre-filed testimony, post-hearing briefs, and the ultimate decision made by the Commission.

The order establishing procedure provides that "any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown." Parties are directed to take positions on issues, and if you cannot take a position prior to hearing, you should let the prehearing officer know at the prehearing conference, and seek leave to identify your position to the issue after the hearing.

6. Post-hearing briefs/bench decision

At the end of a hearing, the typical process is for the parties briefs to be due a time certain after the transcripts are filed. After the briefs are filed, staff will file its recommendation for a decision to be made at an agenda conference, or a special agenda conference if the deliberations are expected to take a long time. The Commission does not allow responses or exceptions to be filed to post-hearing briefs or staff recommendations.

The only time that exceptions may be filed is if a single commissioner acts the hearing officer for a case, and the commissioner makes a recommended order to the full Commission for a decision.

You would be doing your client a disservice if you filed proposed findings of fact and conclusions of law, because they don't easily fit into the process here. You would be much better off spending your time and energy on a post-hearing brief that addresses the issues that have already been identified in the case.

The Commission's discretion to enter a bench decision, rather than allowing post-hearing filings, was recently questioned. You should now see in orders establishing procedure a statement that the Commission may make a bench decision at the conclusion of the hearing.

Should mention transcripts for minute. You can always count on a Commission court reporter transcribing a rulemaking hearing or evidentiary hearing. If you wait for the transcript to be posted on the website, you don't have to pay for it.

However, the Commission does not always transcribe agenda conference discussions, and the Commission court reporters will do so only at the request of a Commissioner or staff member. You can call Jane Faurot, the chief court reporter, to learn whether a transcript of an agenda item has been requested.

D. Injunctions

1. **Authority to seek injunctive relief [364.015, 366.05(10), & 367.121(1)(j)]**
2. **Injunctions Rule, Rule 25-22.030, F.A.C.**

III. Appellate Review

As required in chapter 120, at the end of Commission orders you will find notice language that sets out parties rights for further review. The rights and language are different depending on the type of order.

- A. Direct review to Florida Supreme Court for any Commission action “relating to rates or service of utilities providing electric, gas, or telephone service” [350.128(1)]**

One of the most significant differences concerning appellate review of Commission orders is that actions related to electric, gas, or telecommunications rates and service are directly reviewable by the Florida Supreme Court.

- B. Matters not heard by the Florida Supreme Court are reviewed by the First District Court of Appeal [350.128(1)]**

All other matters are heard by the First District Court of Appeal.

- C. Federal District has jurisdiction over telecommunication interconnection disputes, including enforcement and performance [U.S.C. 252(e)(6)]**

Except that under the 120 exception that I mentioned at the beginning of my presentation, there is a limited scope of federal court review for questions concerning telecommunications interconnection agreements and their enforcement.

These matters are reviewed by the Federal District Court, which is not an appellate court. Because it is not an appellate court, review is initiated by filing a complaint, not a notice of appeal. The matter is treated as an original action, but there is no discovery.

At this time, the line is not clear between state and federal court jurisdiction when the issue concerns something other than interconnection agreements.

- D. Petitions for a stay should be filed with PSC [Rule 25-22.061]**

Suggested Reading for new PSC practitioners:

PSC Web Site (www.psc.state.fl.us)

Chapter 120, Florida Statutes

Statement of Agency Organization and Operation

(www.psc.state.fl.us/general/publications/saoo.pdf)

Chapter 350, Florida Statutes

Uniform Rules of Procedure, in particular Chapter 28-106, Florida Administrative Code

Chapters 25-22 and 25-40, Florida Administrative Code

prehearing order

order establishing procedure

COMMISSIONERS:
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MATTHEW M. CARTER II
KATRINA J. TEW

STATE OF FLORIDA



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

July 20, 2006

Ms. Barbara Leighty
Senior Governmental Analyst
Office of Policy and Budget
Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001

Re: Follow up information for rules amendments

Dear Ms. Leighty:

At our June 16, 2006 meeting, you asked me for some additional information about the Public Service Commission's (PSC) proposal to delete language from Rule 25-22.029(2), allowing the publication of notice of Proposed Agency Action (PAA) in a newspaper to be used to establish the date of receiving notice for protest purposes. This language is found on Page 5 of Attachment A to the November 18, 2005 Petition, on lines 13-14.

Rule 25-22.029, F.A.C., subsection (1), requires the Commission Clerk, following an Agenda Conference, to issue a notice of the PAA action, and to advise parties of record that they have 21 days to request a Section 120.569 or 120.57 hearing. Subsection (1) also provides that the Commission may require a utility to serve written notice of the decision on customers. Subsection (2) allows the Commission to require a utility to publish the notice of PAA in a newspaper of general circulation, if it finds such publication to be necessary for adequate notice. Subsection (2) also allows the date of publication to be used to establish the date of notice receipt. It is this sentence the Commission proposes to delete.

The Commission believes the last sentence of subsection (2) is not necessary and is likely to create confusion. In practice, the Commission rarely orders this type of notice of a PAA by newspaper publication. More importantly, the date of newspaper publication will most likely differ from the date the Commission Clerk issues the official notice, which creates the possibility of two separate 21-day periods, creating great potential for confusion. As we discussed, one significant change the Commission is proposing is the additional language in subsection (3) (Page 5 of Attachment A, lines 18-23) to allow cross-petitions. Allowing two separate 21-day periods creates further confusion as to when this 10-day cross-protest period runs.

Ms. Barbara Leighty
July 20, 2006
Page -2-

Deletion of the last sentence of subsection (2) would make clear that the 21-day clock begins when the Commission Clerk issues notice of the PAA. Any newspaper publication which the

Commission may require in addition could clearly list the date established in the Clerk's notice as the final date for filing a request for hearing. Further, given the time lag between the Agenda Conference and the issuance of the Clerk's notice, it is possible that any Commission ordered newspaper notice could be published in very close proximity to the date the Clerk issues the notice.

For these reasons, to avoid potential confusion, the PSC has recommended that the last sentence of subsection (2) be deleted. Deletion of the sentence will not adversely affect any notice opportunities or rights currently existing, and will greatly reduce the possibility of confusion and promote the efficient operation of the agency. We appreciate the time you and Ms. Perez took to meet with us regarding these changes. If we can provide any further information, please do not hesitate to contact me.

Sincerely,



Larry D. Harris
Associate General Counsel

Cc: Gladys Perez
Michael Cooke

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
LORENA A. HOLLEY
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
MAGGIE M. SCHULTZ

GOVERNMENTAL CONSULTANTS
PARSONS B. HEATH
MARGARET A. MENDUNI

July 17, 2006

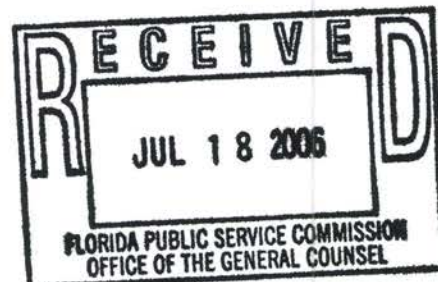
Via E-Mail

Barbara Leighty
Senior Policy Analyst
Office of Policy and Budget
Office of the Governor
Tallahassee, Florida 32301

Re: PSC Petition for Exception to the Uniform Rules of Procedure

Dear Ms. Leighty:

Thank you for providing me a copy of the PSC's Petition for Exception to the Uniform Rules of Procedure and the opportunity to provide comments on the PSC's Petition. I have practiced before the PSC for many years and am familiar with the Commission's procedural rules. Having reviewed the Commission's Petition and the proposed rule revisions, I wish to express my support for the Commission's Petition. The proposed rules or rule revisions regarding Agenda Conference participation, oral argument and the opportunity to file a cross-petition protesting a proposed agency action order will bring certainty and efficiency into the process of practicing and appearing before the Commission. In particular, I applaud the Commission for developing more specific rules addressing oral argument before the Commission and proposing a cross-petition process for proposed agency action orders which will undoubtedly serve to reduce the time and expense incurred in filing a protest petition simply to preserve arguments in the event an adverse party also files a protest petition. If the Commission's proposed rule changes are approved, a party who is otherwise sufficiently content with the Commission's proposed agency action order can wait and see if another party files a protest and then appropriately respond by filing a cross-protest, if necessary.



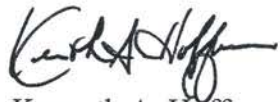
Barbara Leighty

Page 2

July 17, 2006

Again, thank you for the opportunity to provide these comments. If you have any questions, please do not hesitate to give me a call.

Sincerely,



Kenneth A. Hoffman

KAH/vp

cc: Michael G. Cooke, General Counsel, Florida Public Service Commission

STATE OF FLORIDA

COMMISSIONERS:
LISA POLAK EDGAR, CHAIRMAN
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW



GENERAL COUNSEL
MICHAEL G. COOKE
(850) 413-6248

Public Service Commission

July 10, 2006

Ms. Barbara Leighty
Senior Governmental Analyst
Office of Policy and Budget
Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001

Re: Follow up information for rules amendments

Dear Ms. Leighty:

At our June 16, 2006 meeting, you asked me for some additional information about the Public Service Commission's (PSC) proposal to delete language from Rule 25-22.029(2), allowing the publication of notice of Proposed Agency Action (PAA) in a newspaper to be used to establish the date of receiving notice for protest purposes. This language is found on Page 5 of Attachment A to the November 18, 2005 Petition, on lines 13-14.

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Deletion of the last sentence of subsection (2) would make clear that the 21-day clock begins when the Commission Clerk issues notice of the PAA. Any newspaper publication which the

Commission may require in addition could clearly list the date established in the Clerk's notice as the final date for filing a request for hearing. Further, given the time lag between the Agenda Conference and the issuance of the Clerk's notice, it is possible that any Commission ordered newspaper notice could be published in very close proximity to the date the Clerk issues the notice.

For these reasons, ~~in order~~ to avoid potential confusion, the PSC ^{has} recommends ^{ed} that the last sentence of subsection (2) be deleted. Deletion of the sentence will not adversely affect any notice opportunities or rights currently existing, and will greatly reduce the possibility of confusion and promote the efficient operation of the agency. If I can provide any further information, please do not hesitate to contact me.

Sincerely,

Larry D. Harris
Associate General Counsel

We appreciate the time you and Ms. Perez took to meet w/ us regarding these changes.

Cc: Gladys Perez

MBC

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

July 7, 2006

Ms. Barbara Leighty
Senior Policy Analyst
Office of Policy and Budget
Office of the Governor
Room 1601
The Capitol
Tallahassee, FL 32399-0001

Re: Florida Public Service Commission's Petition to Amend its Exceptions
and Create an Exception to the Uniform Rules of Procedure

Dear Ms. Leighty:

Thank you for the opportunity to comment on the above petition. The exceptions to the Uniform Rules of Procedure proposed by the Florida Public Service Commission ("FPSC") in its petition are consistent with the procedural rule modifications proposed by the FPSC in open forum in June of 2005.

The FPSC's stated bases in its petition for requesting amendments to its exceptions and the creation of a new exception to the Uniform Rules of Procedure are well founded. As the FPSC's petition points out, the existing exceptions were granted to the FPSC because they allowed for the most efficient operation of that agency or because they were necessary to implement statutes other than Chapter 120. I concur with the FPSC's statement that the proposed amendments and new exception are needed for the same reasons.

Should you have any questions or need any further information, please feel free to call me.

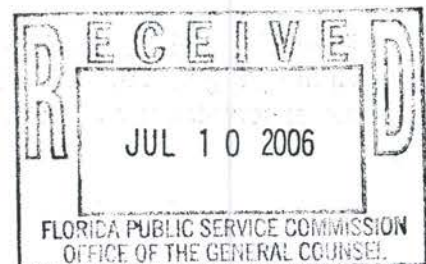
Sincerely,



James D. Beasley

JDB/pp

bc: Larry Harris ✓



NANCY B. WHITE
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

September 2, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED
04 SEP -9 AM 11:19
FLA PUBLIC SERVICE COMM.
OFFICE OF THE
GENERAL COUNSEL

Re: Undocketed Matter: Amendment of Rules 25-22.0021, 25-22.029, 25-22.0376, and 25-22.060, and Repeal of Rule 25-22.058 relating to participation at agenda conference and filing of cross-petitions on proposed agency action

Dear Ms. Bayó:

In connection with the above captioned matter, this is to advise that BellSouth has one concern with the proposed rules. Proposed Rule 25-22.0021(2)(d) states that "when a motion for reconsideration of a non-final or final order is filed, a party that fails to file a written response to a written argument for reconsideration shall be precluded from responding to that argument during oral argument."

Generally speaking, BellSouth supports this concept, however we are concerned that there may be situations in which a written request for reconsideration contains a peripheral argument, a host of arguments that are minor, or an argument contained in a throw-away sentence without support. In those situations, a responding party might concentrate on what it perceives to be the main claim and not address in writing each and every issue. If the moving party then based its oral argument on the peripheral argument, an unsupported argument, or very minor argument that was not addressed in the response, the responding party would be precluded from oral argument.

While BellSouth believes that the situation described herein is more apt to be the exception, not the rule, we wanted to raise it as an issue. BellSouth has discussed its concerns with Ms. Stern and, while we are not requesting a workshop, we have asked Staff to consider our concerns. We will be prepared to discuss our concerns at the agenda at which the rules will be proposed.

Sincerely,


Nancy B. White

cc: Marlene Stern
Nancy Sims

546960